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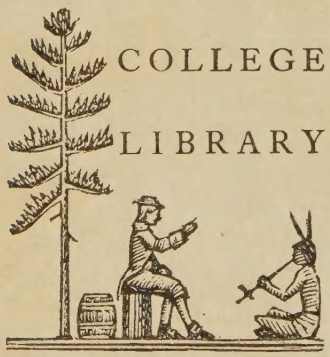
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EXPERIMENTS IN INTERNATIONAL ADMINISTRATION

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EXPERIMENTS IN INTERNATIONAL ADMINISTRATION

By

FRANCIS BOWES SAYRE, S.J.D.

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New York and London

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EXPERIMENTS IN INTERNATIONAL ADMINISTRATION

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Published January, 1919

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To

the dear mother of

Francis and Eleanor

JESSIE WOODROW SAYRE

this little book is lovingly dedicated

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PREFACE

THE great age of Nationalism, which in a single century saw the dramatic unification of two nations, and the growth of a new national consciousness on the part of others, is past. The Twentieth Century is witnessing a profound change—a great moving forward toward a co-operative Internationalism. The surprising growth of the facilities of international transportation and communication, and the consequent increasing interdependency of nation upon nation for the raw materials and manufactured products necessary for the economic existence of each, have made such an Internationalism inevitable, even were the social and moral consciousness of all peoples not already reaching out in that direction. The incalculable world injury which has been the direct result of the unchecked national development of Prussia ever since the teachings of Nietzsche and Treitschke and Bismarck of over a generation ago has startled every one into a keen realization of this interdependency

and of the necessity for organized co-operation if future progress is to be assured.

The growth of Internationalism has found its most recent expression in the increasing demand for a League of Nations; but as to how this shall be constituted, with what powers it shall be clothed, and in what manner it shall function, there is the widest disagreement. Will it be a scheme of mutual guarantees alone, or will it possess a definite organization? Will it be possible to endow it with a practicable legislative, judicial, or executive organ?

These are questions not to be easily or dogmatically answered. The future League of Nations may gradually evolve through the play and interplay of national and world forces from slender beginnings into a potent reality in much the same way as has the British Constitution. Or, if it is given definite and permanent form at the coming Congress, the nature of its organization may be shaped by practical exigencies arising at the Peace Table in a way no one can predict. But in order that a true understanding may be had of some of the fundamental dangers and difficulties involved in the formation of any league, a survey has been made of the more interesting of the recent experiments in international administration. As the title indicates, the field has been restricted

to experiments in *administration;* no effort has been made to trace similar experiments of a legislative or of a judicial nature.

It is a pleasure to have this opportunity of expressing a deep appreciation for the very real help given by Professor Frank M. Anderson, of Dartmouth College, who generously read over the proof-sheets and made many constructive suggestions and criticisms. Grateful acknowledgment is also given to Mr. Joseph P. Chamberlain, of Columbia University, who looked over a part of the advance sheets, and to Miss Helen W. Bones, whose assistance in correcting proof has been invaluable.

New York City,
Christmas Eve, 1918.

EXPERIMENTS IN INTERNATIONAL ADMINISTRATION

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CHAPTER I

EPOCH-MAKING TREATIES OF THE PAST

SELDOM has an emotion so quickly and profoundly seized upon the imagination of the peoples of the world as has the great hope that at the Peace Congress of 1919 there will at last be created a League of Nations to guarantee future peace. It seems as though there had never been a time when so much earnest effort was being devoted to the creation of some world organization, in order that "the brotherhood of mankind may no longer be a fair but empty phrase," but "may be given a structure of force and reality."* Yet, in this high effort to translate into fact the hopes and desires of all peoples for international order and law, it

* President Wilson's message to the Provisional Government of Russia, May 26, 1917.

must not be forgotten that, as a study of past experiments only too plainly shows, not every kind of League will insure peace. The Conference of Versailles will not be the first one at which representatives of the nations have gathered at the conclusion of a great war, sincerely animated by a universal desire for peace, and confident of devising some effective method for preserving and guaranteeing the agreements and settlements reached at the council-table.

At the close of the bloody Thirty Years' War in 1648 the assembled states joined in reciprocal guarantees of peace; and, to make assurance doubly sure, they formed an interesting project for combining the common force of the members against any state[1] which persisted for three years in unjust aggression, the member states "being first advertis'd by the injur'd that gentle Means and Justice prevail'd nothing."*

Again, during the wars that shook the world in the reign of Louis the Fourteenth, when the War of the Spanish Succession was drawing to its close, the Allied Powers of Great Britain and the States General, on December 22, 1711, formed a new League to keep the

1 Numbered notes will be found at the end of each chapter.

* See the text of this interesting project in Appendix A, p. 173. See also in Appendix A, p. 174, the text of an early treaty of compulsory arbitration, made between Spain and the Low Countries on January 30, 1648.

world's peace. By the terms of this treaty they agreed that in case the peace to be concluded at the end of the war should in any way be infringed, if no amicable settlement could be had, "the common forces of the Confederates who shall subscribe this convention, shall be united together, and such a number sent to act either by sea or land against the disturber, whosoever he be, as the greatness of the danger shall require, till satisfaction be made to the party injured, and till there be an entire prospect or provision for renewing and securing the publick peace and tranquility."* When the great peace settlements of Utrecht finally took place in 1713, at the conclusion of the wars which had drenched all Europe in blood, the assembled plenipotentiaries believed that they had at last come to a new era of peace; and in order to make the arrangements then entered into secure beyond peradventure, they placed them under the special guarantees of world-controlling Powers.†

Again, in November, 1815, at the close of the far-flung Napoleonic Wars a serious effort was once more made to secure the peace of Europe by forming a League of Nations. The carefully drawn Treaty of Paris of May, 1814, which had

* For the full text of this project, see Appendix A, p. 175.

† For the text of such guarantees, see Appendix A, p. 177.

put an end to the rule of Napoleon, had been suddenly upset by his dramatic return to power and his "Hundred Days'" reign; the lesson was clear that mere treaty terms were not enough, and that if future war was to be avoided, the great Powers must adopt some means for guaranteeing the peace. Accordingly, when the delegates assembled after the triumph of Waterloo, a League was entered into by Great Britain, Austria, Prussia, and Russia, the four great world Powers of the day. This was founded upon mutual guarantees, to see that the stipulations of the peace treaty then concluded between the Allies and France should be "strictly and faithfully executed in their fullest extent"; but, as in the preceding projects, no international administrative organ was created, and no executive machinery was set up, to give the League a foundation more secure than that of mere promises.

In one respect, however, the scheme of 1815 went a step beyond the projects of 1648 and 1711. Periodic meetings were provided for, in order to consult upon common interests and to consider what measures should be taken "for the repose and prosperity of Nations, and for the maintenance of the Peace of Europe."*

Three years later, when France had regained

* See the text of this agreement in Appendix A, p. 178.

her strength, the same four Powers, together with France, signed a protocol, perfecting the "Union" for the maintenance of peace, and declaring "that this Union, which is the more real and durable, inasmuch as it depends on no separate interest or temporary combination, can only have for its object the Maintenance of General Peace, founded on a religious respect for the engagements contained in the Treaties, and for the whole of the rights resulting therefrom."[2] On the same day the five Powers issued a formal Declaration, to be sent to all the Courts of Europe, in which the formation of the League was announced in the following terms:

"The Sovereigns in forming this august Union, have regarded as its fundamental basis their invariable resolution never to depart, either among themselves, or in their Relations with other States, from the strictest observation of the principles of the Right of Nations; principles which, in their application to a state of permanent Peace, can alone effectually guarantee the Independence of each Government, and the stability of the general association."*

As one reads over the story of these great efforts of 1648, of 1711–13, of 1815–18, all of which have failed to secure any permanent

* For the full text of the Declaration of Aix-la-Chapelle, see Appendix A, p. 179.

peace, one wonders if, in the cold world of historical fact, a League of Nations is not, after all, fundamentally impossible. Three times in in the last two and a half centuries have the diplomats assembled at the close of a cataclysmic war, with a desire, probably, as sincere as that of the leaders of our own day, to inaugurate a new era of peace, and with the strong hope that they had at last found the "formula" that would guarantee it; each time their great hopes ended in failure. In what way will 1919 be different from 1648, 1713, or 1815? Cause and effect are changeless and eternal; will not the same deep-lying causes which have turned to failure every effort to create a successful League of Nations in the seventeenth, eighteenth, and nineteenth centuries continue to operate in the twentieth?

The answer is that we must change the principles upon which the League is built. In two ways can this be done, the one a matter of inner substance, the other a matter of structure.

The main reason for the failures of the past has been that heretofore treaties concluding great world wars have been founded essentially upon injustice. The treaty of 1815 was built upon the principle of dynasty rather than upon that of nationality; it was written in the selfish interest of rulers rather than of peoples.

It broke up the Italian people, whom Napoleon had brought together, and parceled them out, chiefly to Austrian princes; it forced together the disparate peoples of Holland and Belgium under a single monarch; it bestowed upon Prussia by way of reward about two-fifths of the kingdom of Saxony; it forced artificial arrangements upon unwilling peoples.* No treaty founded on injustice can endure; no possible effort to retard the irresistible progress and triumph of justice and righteousness in the world can succeed. Poland in its utter helplessness was once calmly parceled out among three mighty Powers "in shining armor"; Poland to-day is rising to mock the fallen dynasties of the Hapsburgs, the Hohenzollerns, and the Romanoffs. A century ago the Italian people were split into petty states and forced by Metternich to bear the yoke of hated Austrian princes who cared nothing for the good of the people they enslaved; to-day the Austrian army is prostrate before the victorious soldiers of a redeemed and unified Italy. The peace settlements of the past have all been founded on purely selfish interests, whether

* Self-interest and absolute disregard of the rights of peoples formed the key-note of the whole treaty. Norway was taken from Denmark and connected with Sweden; most of the Grand Duchy of Warsaw was forced under the rule of the Russian Tsar; and Venetia and Lombardy were actually incorporated within the Austrian Empire.

dynastic or national; and they have had as their end in view the guarantee of specific territorial arrangements rather than the guarantee of international justice and law as general principles to be impartially applied. If the treaty of 1919 is to succeed where others have failed, it must be founded upon the broad interests of peoples; it must be dictated by justice and righteousness, and not by the narrow ambitions and selfish interests of triumphant governments. In this respect one dares to hope that the treaty of 1919 will be different from all those that have gone before.

A second cause of failure has been the fact that in the arrangements of the past nations have been unwilling to submit to a sufficient amount of external control to make an effective international executive organ possible. For this reason the execution of treaties and guarantees, as well as the enforcement of the terms of international Leagues, has depended upon the mere promises of the signatory states; words formed the only sanction of these agreements; there had been no international machinery to enforce them against the wishes of a signatory state whose selfish interests had become endangered by some new turn of events. If in 1919 the project for a League of Nations is to succeed where earlier efforts failed, it would

seem imperative that some guarantee be found, more effective than mere words, to make secure the keeping of peace.* Too rigid a machinery

* The system of Collective Guarantees of the nineteenth century has not generally proved sufficient to prevent violation of them by any powerful nation which has found it to its interest to do so. It is interesting to study in this connection a list of the more important treaties of collective guarantee of the last hundred years:

Date.	Signatory States.	Terms of Treaty.	Treaty Found in Hertslet's "Map of Europe by Treaty."
June 9, 1815.	Austria, France, Gt. Britain, Portugal, Prussia, Russia, Spain, Sweden.	Guarantee of "the possession of the countries marked out in Art. 15 in full property and sovereignty" (the Saxon cessions).	Vol. I, p. 223, Art. 17
Nov. 20, 1815.	Austria, France, Gt. Britain, Prussia, Russia.	Guarantee of the perpetual neutiality, and of "the integrity and inviolability" of Switzerland.	Vol. I, p. 370
May 7, 1832.	Gt. Britain, France, Russia, and Bavaria.	Guarantee that "Greece shall form a monarchical and independent state."	Vol.II, p. 895, Art. 4.
April 19, 1839.	Austria, France, Gt. Britain, Prussia, Russia, and Belgium.	Guarantee of the independence and neutrality of Belgium.	Vol. II, p.997, Art. 1.
May 8, 1852.	Austria, France, Gt. Britain, Prussia, Russia, Sweden and Norway, and Denmark.	Guarantee of the integrity of the Danish Monarchy.	Vol. II, p. 1153, Preamble and Art. 2.
Mar. 30, 1856.	Austria, France, Gt. Britain, Prussia, Russia, Sardinia, Turkey.	Guarantee of the independence and territorial integrity of the Turkish Empire.	Vol. II, p. 1254, Art. 7.

must, indeed, be avoided; unless provision is made for accommodating the international arrangements to the world changes which are constantly in progress, no project can succeed. But whatever form it may take, it seems clear that the new League can be made infinitely more effective than any projects of mere mutual guarantees or Leagues of the past have been by the creation of some international body to decide quickly and authoritatively when common action is to be initiated, what kind of action

April 15, 1856.	Austria, France, Gt. Britain.	Guarantee of the independence and territorial integrity of the Turkish Empire.	Vol. II, p. 1280, Arts. 1 and 2.
Aug. 19, 1858.	Austria, France, Gt. Britain, Prussia, Russia, Sardinia, Turkey.	Guarantee of the privileges and immunities of the Danubian principalities.	Vol. II, p. 1333, Arts. 2 and 9.
July 13, 1863.	France, Gt. Britain, Russia, and Denmark.	Guarantee of the independence and constitutional order of Greece.	Vol. II, p. 1547, Art. 3.
May 11, 1867.	Austria, Belgium, France, Gt. Britain, Italy, Netherlands, Prussia, Russia.	Guarantee of the neutrality of Luxemburg.	Vol. III, p. 1803, Art. 2.
Nov. 2, 1907.	Gt. Britain, France, Germany, Norway, Russia.	Undertaking to respect the integrity of Norway.	*Amer. Jour. Int. Law*, Vol.II,Sup. p. 268, Art. 2.
April 23, 1908.	Denmark, France, Gt. Britain, Germany, Netherlands, Sweden.	Undertaking to preserve the *status quo* of the North Sea states.	*Amer. Jour. Int. Law*, Vol.II,Sup. p. 272.
April 23, 1908.	Denmark, Germany, Russia, Sweden.	Undertaking to preserve the *status quo* of the Baltic States.	*Ibid*, p. 270.

is to be taken, and how it is to be brought into play. Whether or not the time is yet ripe for the creation of such an organ is a question which need not here be discussed. But in any event, if the future League is to have an executive organ, of whatever nature it may be, certain grave and fundamental problems must be faced. Will the ordinary unanimity requirement for voting be retained, so that a single discomfited state may block all action? Will the rule which obtained at both Hague Conferences, that each state is entitled to a single vote and all votes are of equal weight, still be allowed to hold? In the consideration and settlement of these and other fundamental questions it may prove serviceable to study as a background some of the more interesting instances of international administrative organs which have been formed within recent years.

NOTES

[1] Presumably this provision was adopted to preserve peace among the separate and frequently warring states of the Holy Roman Empire. See Koch et Schoell, *Histoire des Traités de Paix*, Vol. I, p. 248.

[2] See Hertslet's *Map of Europe*, Vol. I, p. 572, Art. 2. Art. 4 provides for special meetings of the Powers in furtherance of the objects of the Union.

CHAPTER II

TYPES OF INTERNATIONAL EXECUTIVE ORGANS[1]

A SHARP distinction must be drawn between international executive organs with large powers of control and those with little or no power of control. Failure to make this distinction is responsible for many loose statements as to the success already attained in international organization; the large number of successful international Public Unions which have been organized and put into happy operation within the last fifty years, with their bureaux and administrative officers, is used to support the declaration that in order to create a successful League of Nations all that we have to do is to widen the scope and enlarge the form of organization of these various Public Unions. But an international organ which has proved immensely successful for the administration, for instance, of the Universal Postal Union, might be utterly impractical and inefficacious for a League with real power to keep

the world's peace. An international organ may have for its sole function such harmless duties as the collection of information, the preparing of statistics, or the publication of a specialized magazine; or it may have power to control the actions of great nations in matters of vital concern. In order to point out these differences, the existing international administrative organs may be roughly classified in three groups according to the nature of the power accorded to them.

Type I.—International Administrative Organs with little or no real power of control.

The permanent bureau of the Universal Postal Union is a good example of this type. Although the Postal Union itself possesses considerable power, the only function of the permanent bureau is of an informational and ministerial character. It cannot control in any way the free exercise of sovereignty by any state. Of the same nature are the Permanent Bureau of the Union for the Protection of Industrial Property, the International Office of Public Health at Paris, the Permanent Commission of the International Institute of Agriculture, and countless others.

Type II.—International Executive Organs with real power of control over some local situation within a particular state or states.

Organs of this type are not mere business bureaux of administration, but are governing bodies possessing the actual authority and ostensible power to exert over some local situation an international control. As might be expected, such an instrument of international control is most frequently set up in countries with inefficient or backward governments, such as Turkey, Albania, Morocco as it existed under Moorish rule, or the Congo country. The local sovereign may or may not be given representation upon the international Commission. The latter may have full sovereign power over the particular locality, or it may have only delegated and carefully defined powers. A good example of this type was the International Commission of Control created to govern Albania, and composed of one representative each from Austria, France, Germany, Great Britain, Italy, Russia, and Albania. The Commission held full sovereign power over Albania. Another excellent example is the European Danube Commission, composed of representatives of the larger European states, with power to control the entire navigation of

the lower Danube, free from interference by the local Roumanian Government.

Type III.—International Executive Organs with real power of control over all of the member states themselves.

Sometimes a matter closely affecting the interests of a number of states is of such a nature that it cannot be satisfactorily controlled by the single-handed action of any one state, or even of a number of states acting separately and independently of one another. Occasionally matters of this kind have assumed such vital importance that states have been constrained to set up some international organ with power to control or restrict the action of the creating states themselves. It is not surprising that organs such as this have rarely been created; for their very existence is conditioned upon the agreement of the member states to refrain from the exercise of their own sovereignty in those spheres in which power is delegated to the international Commission.

The best example of this type of organ is the permanent Sugar Commission, which was created in order to rid Europe of the onerous system of granting bounties for the exportation of sugar. This Commission, made up of

representatives from most of the leading states of Europe, possesses the unusual power of adjusting the sugar tariffs of the member states, even without their consent.

NOTE

[1] Only such commissions as are permanent in their nature and are composed of representatives of more than two states will be considered. Mention will not, therefore, be made of such interesting commissions as the American-Canadian International Fisheries Commission, instituted according to Art. 1 of the Treaty of Washington of April 11, 1908 (Treaty Series, 1908, No. 17); the American-Canadian International Joint Commission concerning boundary waters, instituted by Arts. 7–12 of the Treaty of Washington of January 11, 1909 (Treaty Series, 1910, No. 23); or the permanent Mixed Fisheries Commission between the United States, Canada, and Newfoundland, created in accordance with the arbitral award in the North Atlantic Fisheries Case.

Other international commissions which can be no more than mentioned are the financial commissions in the interest of foreign creditors. The most important of these are the ones which have been instituted in Turkey since 1878, in Egypt since 1880, and in Greece since 1897. (See Oppenheim, *International Law*, Vol. I, Sect. 461.) For the international Commission instituted under Art. 6 of the

Treaty of London of May 30, 1913, to regulate the financial obligations of the Balkans, see Bonfils, *Droit. Int. Public* (7th ed.), No. 306[3], p. 198.

Since only international commissions of an executive nature will be discussed, no mention will be made of such important judicial organs as the Hague Permanent Court of Arbitration and the proposed International Prize Court, nor of such notable legislative gatherings as the Hague Conferences of 1899 and 1907.

CHAPTER III

INTERNATIONAL ORGANS WITH LITTLE OR NO POWER—TYPE I

THE International Public Unions, whose permanent bureaux furnish excellent examples of the first type of executive organ, have grown up within the last fifty years in response to the ever-growing necessity for unified control of such matters as international trade and commerce. Under the stimulus of this imperative need public and private international organizations have been formed relating to almost every conceivable subject of international concern.[1] Literally hundreds of these associations composed of private individuals have been formed; in the year before the war (1913) 174 such Congresses or Conferences were held;[2] and in the years 1901–10 there were held no less than 790.[3] So fruitful and serviceable have these proved that states, as well as individuals, have formed international organizations for specific purposes; there are to-day over thirty of these public and official international unions,[4] some of them of large

importance, such as the Universal Postal Union, the International Sanitary Union, the Union for the Protection of Industrial Property, and the Slave Trade Convention.

Because of the importance and the success of its achievements, the Universal Postal Union is probably the best known of any of the Public Unions. Before 1863 international postal communication was entirely dependent upon separate treaties between various states; and since each country was concerned with promoting its own national profit and quite unconcerned about international interests, the foreign postal rates were as high as the transmitting states dared to make them. The rates were not only high, but were so uncertain and complicated by reason of the fact that they included a payment to the country of despatch, another to the country of destination, and others to every country through which the letter was carried, that international business involving much postal correspondence was rendered almost impossible. For instance, one sending a letter from the United States to Australia was confronted by the fact that the postage would cost 5 cents, 33 cents, 45 cents, 60 cents, or $1.02 per half-ounce, according to the route by which it was sent.

With the growing necessity for international

exchange the postal conditions became so intolerable that, after a vain effort to achieve an international settlement in 1863 which resulted in a fruitful exchange of ideas but in no permanent organization, a Postal Congress at which twenty-two states were represented met at Berne in 1874 and finally formed a General Postal Union. In 1878 this became the Universal Postal Union. Since that date various modifications have been made, and new states have been added to the Union; the convention agreed to in Rome in 1906, which is at present in force, was signed by practically all the civilized states of the world.*

* Some idea of the magnitude and importance of international postal communication may be gathered from a glance at some of the statistics published in the annual reports of the Postal Union. In the report for 1910 the statistics given were as follows:

Number of letters carried	905,243,677
Post-cards	277,932,086
Printed matter	551,929,168
Ordinary packages	55,405,883
Packages with value declared	5,770,273
Money orders	28,839,466
Value of money orders (in francs)	1,614,924,629

"Whatever other significance they may have, the above figures express with sufficient eloquence the formidable extension of international relations by postal methods. What an enormous exchange of ideas, of impressions, of relations of all kinds among peoples separated by ethnic, linguistic, and other profound differences is hidden behind these formidable totals! Postal exchange constitutes undeniably one of the most powerful factors in contemporaneous international life." Translated from *La Vie Internationale*, Vol. I (1912), p. 508.

The Postal Convention, as modified at Rome in 1906,[5] contains the following provisions:

1. The countries in the Union form a single postal territory for the reciprocal exchange of correspondence.

2. The right of transit is guaranteed throughout the entire territory of the Union.

3. Transit charges are definitely fixed and standardized, according to weight and mileage of transit.

4. The expenses of transit are borne by the administration of the country of origin.

5. Uniform and fixed postal rates are established.

6. The responsibility of administrations in case of loss is fixed and definitely regulated.

7. Rules are laid down governing special delivery, registry, collectible trade charges, reply coupons, reforwarding, etc.

8. Arbitration is provided for to settle all disputes arising from the Convention between member states.

9. An International Bureau is created as the administrative organ of the Union.

10. Provision is made for the holding of periodic Congresses and Conferences, as the constituent and legislative organs of the Union.

The following three organs constitute the government of the Union:

1. *The Congress.*

This is called upon a demand made by two-

thirds of all the signatory states; it is to meet at least once every five years.* Each state has one vote. The Congress has power to alter or add to the Convention itself, as well as to make or alter all regulations for its execution. For the exercise of both of these powers a majority vote is sufficient.[6] The Convention as amended by the Congress is signed by each delegate, and, like other diplomatic agreements, requires ratification by the signatory states in order to become binding.

2. *The Conference.*

This was provided for in the original Convention, in order to decide simple administrative questions; but as a matter of fact, it has proved a dead letter, never having met since 1876.

3. *The International Bureau.*

This is a permanent administrative body, and furnishes an excellent example of an international organ of the First Type. It is maintained under the supervision of the Swiss postal administration at Berne. Its duties are to collect, publish, and distribute information concerning postal matters among all the member states, to circulate proposals, and to give notice of alterations adopted, to render an advisory opin-

* This provision has not been strictly observed in practice.

ion upon questions in dispute, and to act as a financial clearing-house. Its expenses are divided among the signatory states by classifying the latter into seven groups, each of which pays a different proportion of the expense.[7] The work of this bureau is performed by seven permanent functionaries under the supervision of the Swiss Bundesrath. It edits a monthly, *L'Union Postale*, in French, German, and English.[8]

In order to make changes in the Convention between Congresses, provision is made for voting by mail through the medium of the International Bureau. Unanimity is necessary for the more important changes, when this method of voting is followed; a majority is sufficient for questions of interpretation.

One of the striking features of the Universal Postal Union is the provision for what virtually amounts to a weighting or valuing of votes. The Convention early faced the difficulties involved in according to Montenegro, for instance, the same voting power as to the British Empire. Although it proved impossible to get away from the customary form of giving to each member state a single vote, and making all votes of equal value, yet, as a matter of fact, the great nations were given larger power by according votes to groups of colonies.[9] Thus, one vote is

given to France, another to Algeria, another to French Indo-China, and a fourth to other French colonies. In this way France wields four votes, Great Britain and its possessions have six, and the United States two. Germany had three votes before the war broke out. The British possessions are the only ones which have not always voted with the mother country. In still another way has the Postal Union managed to escape the consequences of the rule of equality of voting power. In the actual conduct of the affairs of the Postal Congresses, most of the important work is necessarily done in committee; and the great nations have generally managed to secure such representation upon the various committees that they are able to exercise an influence quite out of proportion to the number of actual votes which they possess.

Although the permanent bureau is an organ with no real power, the Postal Union itself possesses considerable authority, and, on the whole, it has most successfully substituted international for state government in postal matters.* Although the state governments have carefully guarded themselves on paper, and are

* In answer to an inquiry as to how successful the organization of the Postal Union had proved in its actual operation, the Postmaster-General of the United States recently asserted that "the organization of the Union and the periodical Congresses have proved satisfactory in practice."

not bound without a separate ratification,* yet, in practice, such a ratification often cannot be refused even though the change is unacceptable. In one instance the French Government was strongly opposed to any change in a foreign postage rate, and its delegate announced that he would refuse to accept it. The proposed change, however, was adopted by a majority of votes; and the French Government, sooner than give up the incalculable advantages of membership in the Postal Union, promptly ratified the change. "In fact, so far has the surrender of independence to International Government gone in the Union, that the theoretical right of the State to refuse ratification to the Convention and Règlement as voted at a Congress, in practice hardly exists. The Administrations adhering to the Union, never wait for formal ratification before putting the new regulations into operation, and the decisions of a Postal Congress are acted upon whether they are ratified or not."[10]

* The procedure of the Postal Congresses is as follows: Action is taken within the Congress by majority vote. If all the signatory Powers subsequently give their ratification, this majority vote thereupon becomes binding upon all member states. If one or more refuse to ratify, either the question is referred back to a committee for further report and recommendation, or it may be agreed that the majority vote shall control, and the subject matter be dealt with in a protocol so framed as to meet the special views of the minority.

Most of the other Public Unions which are endowed with permanent legislative and executive organs, have organizations not unlike that of the Postal Union, but with many individual differences of detail. The legislative organ is the general Congress, or Conference. It meets at regular or irregular periods and is composed of delegates from the member states, each state usually having one vote. For action in these Congresses unanimity is the general rule;* so far the states have been loath to subordinate national interests to the larger international issues. The Congress in some cases has power to change the original convention under which it meets or to make amendments to it, like a constituent assembly, as well as to pass ordinary legislation and rules for the governance of the Union. The work of the Congress is usually to make regulations for the government of its internal affairs, often to appoint and control the Administrative Bureau of the Union, to discuss and decide matters of general policy, to seek better methods for attaining the objects of the Union, to compare results, to make reports, and to seek standardization and uniformity in the various countries from which the delegates come.

* As has been seen, this is not true of the Universal Postal Union.

The routine administrative work of the Union is usually carried on by a central bureau. This forms the connecting link between the various member states. It acts as the intermediary for communication back and forth between the governments; it carries out specific and sharply defined administrative duties assigned to it by the Congress; it gathers and disseminates information, statistics, and reports; it keeps the records and papers of the Union. Occasionally it also has power to act in an arbitral capacity. It usually consists of a president or chairman, a secretary, and several other functionaries; these are appointed sometimes by the general Congress, and sometimes by the government of the country in which the permanent bureau is located. Since these bureaux possess no substantial power, questions concerning the nationality of their officers, as well as difficulties over their appointment, seldom arise.

Two specific instances of administrative bureaux may be given by way of illustration. The Union for the Protection of Industrial Property,[11] the object of which is to extend throughout all the countries of the Union the same protection to owners of patents or trade-marks as is accorded to them in their home country, maintains a permanent bureau at Berne.

The duties of this bureau are to collect "information of every kind relating to the protection of industrial property," to compile statistics therefrom, to publish a periodical on matters of interest to the Union, to answer requests for information, to make annual reports upon the management of the Union, and to act as an intermediary for communication between the member governments. It also acts with regard to certain countries as an international registry for trade-marks. Its officers are appointed by the Swiss Government, and consist of a secretary-general and three assistants.

The Brussels Conference of 1890 for the repression of the slave trade, similarly set up an International Bureau at Zanibar. This bureau is peculiar in that it is composed of one representative of each of the signatory Powers; herein it differs from the ordinary bureau, which usually consists of only a few officers, quite frequently appointed irrespective of their nationality. The duties of the bureau, however, are quite typical. These are to "draw up regulations fixing the manner of exercising its functions," to "centralize all documents and information of a nature to facilitate the repression of the slave trade," to collect for this purpose information and papers of every kind that may lead to the discovery of per-

sons engaged in the slave trade, to furnish information to those specially requesting it, and to prepare a report of its own operation every year.[12]

A more recent development in the evolution of the international Union is the Commission—a sort of executive board to set up and control the administrative work of the bureau. The Commission often has the power of making administrative regulations, and is also sometimes intrusted with the fiscal control of the Union. In some instances it is given arbitral power. In the "Sugar Union" the Commission is intrusted with surprisingly large powers.* The Commission is usually made up of representatives from all of the signatory states,[13] but in certain of the Unions it is elected by the Congress and contains fewer members than the number of member states.[14] The principal Unions which make use of the Commission are the Pan-American Union, the Sugar Union, the International Institute of Agriculture, the Metrical Union, the Geodetic Union, the Penitentiary Union, the Union for the Exploration of the Sea, the Seismological Union, and the Association for Unifying the Formulæ of Potent Drugs. The most striking thing about these Commissions is that many of them act

* The Sugar Commission will be described elsewhere.

upon a majority vote. The overcoming of the requirement of unanimity in international governing bodies is a long step forward in international organization.

Many of the Unions have sought by one means or another to escape from the time-honored rule of equality of voting power. The method adopted by the Postal Union has already been considered. Perhaps the most suggestive of any is that which has been followed by the International Institute of Agriculture, as well as by several other Public Unions. The member states are divided into five groups, each of which is assessed a different amount for the expenses of the Union, and is given a voting power roughly proportioned to the amount of the assessment—that is, the relative power of each state is proportioned to the responsibility and financial burden which it has assumed. Each member state is then allowed freely to choose the group to which it will belong. In this way the problem of apportioning voting power automatically solves itself.*

* See Art. 10 of the Agricultural Convention of June 7, 1905. (The text may be found in Descamps et Renault: *Recueil International des Traités*, 1905, p. 148.) This article, translated, reads as follows:

"Art. 10. The nations adhering to the institute shall be classed in five groups, according to the place which each of them thinks it ought to occupy.

"The number of votes which each nation shall have, and the

In the constitution and operation of these Public Unions there is much that is suggestive; they show that when the necessities of the situation demand an international control, it has not proved impossible to organize and to exercise it successfully.* In the Postal Union, for instance, as has already been seen, the Congress has power, by majority vote, to alter postal rates, to make regulations concerning the registry and handling of mail, and to determine rules of responsibility, all of which are virtually binding upon the signatory countries.† This

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number of units of assessment, shall be established according to the following gradations:

Groups of Nations.	*Numbers of Votes*	*Units of Assessment.*
I	5	16
II	4	8
III	3	4
IV	2	2
V	1	1

"Colonies may, at the request of the nations to which they belong, be admitted to form part of the institute on the same conditions as the independent nations."

* This power of control, heretofore, has been granted only within very sharply restricted spheres, as, for instance, within the sphere of sugar tariff administration, or within the limits of postal administration.

† Although it might be argued that the power on the part of any state to refuse ratification to the work of the Congress prevents the latter from having any obligatory authority, yet this legal power, as a matter of practical administration, often cannot be exercised. For an instance in point, see L. S. Woolf, *International Government*, p. 123.

has amounted to something very like a surrender of sovereignty by all of the signatory states so far as postal administration is concerned.

But it must be pointed out that such power as the Unions possess is legislative rather than executive; it usually lies, not in the administrative organs of the Unions, but in the legislative bodies or in the restricting provisions of the treaties entered into between the member states. The functions of the permanent bureaux are chiefly of an informational or ministerial character; apart from the arbitral power accorded to them in a few Unions they possess practically no real power. If an executive organ with power is desired for the League, these permanent bureaux will not do as prototypes.

Nations have been willing enough to intrust purely ministerial duties to a group of several men unrepresentative of all the member states and have come to an easy agreement upon their appointment; but once clothe the group with large and important power, and the face of everything will be changed. Few nations will be willing to submit to control by a body in which they are not represented, and the appointment to such positions of power will create a problem of supreme difficulty. For these reasons the permanent bureaux of the Public Unions cannot be adhered to too strictly

as models for the creation of an executive organ for the League of Nations.

If the administrative bureau of the Public Union will not serve as a model, neither will the legislative organ. The majority of the legislative organs or congresses retain the unanimity requirement and the rule of equality of voting. But it is open to serious doubt whether these would not have to be very greatly modified in any executive organ wielding vital power, if the great nations are to be induced to participate.

For these reasons, if for no others, the Public Unions must be regarded rather as hopeful examples of the large possibilities of international accomplishment than as patterns of organization to be followed in setting up the future League of Nations.

NOTES

[1] For a list of 116 such Congresses or Conferences (admittedly incomplete) of an official character since 1850, see *Amer. Jour. of Int. Law*, Vol. I, pp. 808–817. For a list of a still greater number of Congresses or Conferences of a private character, see *Ibid.* pp. 818–829.

[2] See lists of these in *Annuaire de la vie internationale*, Vol. IV, 1913, pp. 561–566.

[3] See lists in *Annuaire de la vie internationale*, 1910.

[4] The list and classification of these, as given in Woolf, L. S., *International Government*, pp. 102–103, is as follows:

I. Permanent Deliberative or Legislative Organs working in conjunction with Administrative Organs.

1. The Telegraphic Union.
2. The Radiotelegraphic Union.
3. The Universal Postal Union.
4. The Metric Union.
5. The International Institute of Agriculture.
6. La Commission pénitentiaire internationale.
7. The Sanitary Councils and International Office of Public Hygiene.
8. The International Geodetic Association.
9. The International Seismological Union.
10. The Pan-American Union.
11. The Central American Union.

II. Periodic Conferences in conjunction with Permanent International Bureaux or Offices.

1. Railway Freight Transportation.
2. Industrial Property.
3. Literary and Artistic Property.
4. Pan-American Sanitary Union.
5. Slave Trade and Liquor Traffic in Africa.

III. Conferences and Conventions with object of Unifying National Laws or Administrations.

1. Conférences internationales pour l'unité technique des chemins de fer.
2. Automobile Conference.

3. Latin Monetary Union.
4. Scandinavian Monetary Union.
5. Central American Monetary Union.
6. Conference on Nomenclature of Causes of Death.
7. Legal Protection of Workers.
8. Submarine Cables.
9. Commercial Statistics.
10. White Slave Traffic.

IV. Special International Organs of a Permanent Character.

1. Sugar Commission.
2. Opium Commission.
3. Plague Surveillance in China.
4. International Committee of the Map of the World.
5. Hague Tribunal and Bureau.
6. Central American Court of Justice.
7. International Bureau for the Publication of Customs Tariffs.

[5] For the text of the Convention, see Hertslet's *Commercial Treaties*, Vol. XXV, p. 430.

[6] See Woolf, L. S., *International Government*, p. 123.

[7] See Art. XXXVIII of the Règlements.

[8] The functions of the Bureau are defined by Art. 22 of the International Postal Convention of May 26, 1906 (Hertslet's *Commercial Treaties*, Vol. XXV, p. 444). Art. 22, translated, reads as follows:

"(1) Under the name of the International Bureau of the Universal Postal Union a central office is

maintained which is conducted under the supervision of the Swiss postal administration, and of which the expenses are borne by all the administrations of the union.

"(2) This bureau is charged with the duty of collecting, collating, publishing, and distributing information of every kind which concerns the international postal service; of giving, at the request of the parties concerned, an opinion upon questions in dispute; of making known proposals for modifying the acts of the Congress; of notifying alterations adopted; and, in general, of taking up such studies and labors as may be confided to it in the interest of the Postal Union."

[9] Art. 27 of the Postal Convention of 1906.

[10] Woolf, L. S., *International Government*, p. 123.

[11] See the Convention for the Protection of Industrial Property, signed March 20, 1883, with the Additional Act signed at Brussels on December 14, 1900. The text may be found in Martens, *Nouveau Recueil Général* (2nd Series), Vol. III, p. 449. For the constitution of the Administrative Bureau see Art. 13, and also Art. 6 of the Final Act.

[12] See the Brussels Act of July 2, 1890, signed by the leading nations of the world. It may be found in Martens, *N. R. G.* (2nd Series), Vol. XVII, p. 345. For the constitution and powers of the International Bureau at Zanzibar, see Arts. 27, 74–80.

For another example of a permanent bureau, see Art. 57 of the Convention of October 14, 1890, creating the International Union of Railway Freight

Transportation. (See Martens, *N. R. G.* (2nd Series), Vol. XIX, p. 289.)

[13] As, for instance, in the Pan-American Union, the Sugar Union, and the International Institute of Agriculture. (Reinsch, Paul S., *Public International Unions*, p. 154.)

[14] As, for instance, in the Metrical Union and the Geodetic Union. In the former the commission is composed of fourteen members, seven of whom are elected every six years. In the latter it is composed of two ex-officio members and nine others, four or five of whom are elected at each meeting of the triennial Conferences.

CHAPTER IV

INTERNATIONAL ORGANS WITH POWER OF CONTROL OVER LOCAL SITUATIONS—TYPE II

ALTHOUGH successful examples of international organs of the first type, where no large power of control is exercised, may be quoted almost without number, the successful examples of the second type, where substantial governing power exists, are extremely few. The larger the power conferred upon the commission and the more vital the nations' concern in the questions placed under international control, the greater become the conflicting tensions and strains. Under such conditions a badly organized commission, or one with a weak personnel, will be sure to break down.

1.—The European Danube Commission

Probably the best example of this second type of international commission, and one which has met with generally acknowledged success,

is the European Danube Commission.* From 1829 up to the time of the Crimean War, Russia had held the mouths of the Danube; and so inefficient and incompetent had been her administration that the river mouths had been allowed to fill up, and the navigation of the lower Danube had become as dangerous as it was expensive. The matter was of particular concern to Austria, situated at the upper end of Danube navigation, and to England, anxious to provide a safe route for her grain trade with the Roumanian ports. As the Turkish administration which was to succeed the Russian in 1856 promised little improvement, the question of the Danube became a matter for special consideration at the close of the Crimean War. Under Arts. 16–18 of the Treaty of Paris of

* Some writers have even gone so far as to call the Danube Commission a "veritable state." This, of course, is quite erroneous. See, for instance, L. Camand, in his book, *Étude sur le Régime juridique du Canal de Suez*, p. 235. He calls the Danube Commission "*un véritable État*," "supplying its financial needs by the collection of taxes and by loans; possessing legislative authority to establish regulations; and having judicial authority, exercised through the medium of its inspectors, who render judgment on final appeal in controversies arising out of the subject of navigation. In addition to this, it is independent of local power and is protected by a complete neutralization of its works, of its property, and even of its personnel."

Hershey, in his *Essentials of International Public Law*, says, on p. 207, note: "The Commission appears to form a distinct International Person, having the power of prescribing and enforcing penalties for the violation of its regulations."

1856, the principles of free navigation laid down at the Congress of Vienna in 1815 with regard to rivers which "separate or flow through several states"* were made applicable henceforth to the Danube. In order to secure the needed dredging and improvement of the lower Danube, which could never have been expected under Turkish rule, the Powers set up a "European Commission," composed of one delegate each from Great Britain, France, Austria, Prussia, Russia, Sardinia, and Turkey, the signatory powers to the treaty of 1856, charged with designing and constructing the necessary works to deepen the channel and clear the mouths of the river for the accommodation of sea-going ships. The Commission was given power to levy such dues as were necessary to pay its expenses, the amount of the dues to be determined by a majority vote, on the express condition "that in this respect, as in every other, the flags of all nations shall be treated on the footing of perfect equality." The original nature of this Commission was solely of an en-

* Art. 109 of the Final Act of the Congress of Vienna of June 9, 1815, declares that "navigation on all rivers indicated in the preceding article, from the point where each of them becomes navigable to its mouth, shall be entirely free, and shall not, in respect to commerce, be prohibited to any one; it is understood, however, that one will conform to the regulations relative to the police of this navigation. These regulations shall be uniform for all and as favorable as possible to the commerce of all nations."

gineering character, to improve the navigability of the lower Danube. It was expected to be quite temporary, and its authority extended up the river only as far as Isaktcha, beyond which river improvements were not required. For the purpose of making regulations for the navigation of the entire Danube River, a second "Riparian Commission" was established, composed of representatives of only the riparian states.* This was looked upon as the normal and permanent administrative and river-regulating organ. But its effort to establish the right of the riparian states to levy navigation tolls in excess of its actual expenses, and even to exclude altogether the ships of non-riparian states, aroused hostility on the part of England and France. Owing to this hostility and to its own internal difficulties, the Commission before long broke down; and most of its duties, so far as the lower part of the Danube was concerned, were gradually assumed by the European Commission, whose life was prolonged from time to time by special conventions. So effective did the latter Commission prove[1] that by the Public Act of November 2, 1865,[2] indorsed by the Protocol of March 28, 1866,[3] formal recognition and approval of the

* These included Würtemberg, Bavaria, Austria, Turkey, and the Danubian principalities.

work which it had already accomplished was given to it, and definite authority was conferred upon it to build works of a more permanent nature for the improvement of the river and to establish henceforth complete regulations for the navigation of the lower Danube.

For the better protection of the work of the Commission, and in recognition of the effectiveness of its accomplishments, "the works and establishments of all kinds created by the European Commission" were in 1865 given the benefits of neutralization;[4] and in 1871 this neutralization was extended so as to cover the administrative and technical personnel as well as the works of the Commission.[5] Furthermore, in 1868, in order to enable it to borrow the funds necessary for the accomplishment of its work, and in order to place it on a stable financial footing, all the Powers concerned except Russia agreed to guarantee a loan of 3,375,000 francs made in the name of the Commission.[6]

The continued success of the European Commission in the administration and regulation of the river navigation caused England to urge the further extension of its territorial jurisdiction; this was accomplished by the Treaty of Berlin of 1878, Art. 53 of which extends its authority from the river mouth up

to Galatz "in a complete independence of territorial authority." Art. 55 intrusts it with the duty of formulating, in concert with delegates of the riparian states, police rules and navigation regulations for the section of the river between Galatz and Hungary.[7] In 1883 its territorial jurisdiction was extended to Braïla,[8] a Roumanian port practically at the head of the river navigation for sea-going ships. A special flag was accorded the Commission in 1882, and its employees were given the right to wear a distinctive armband. On November 10, 1911, the Commission passed new river regulations, to become effective on July 1, 1912.[9] Thus there has grown up, through a natural evolution, an international commission, composed of representatives of the great Powers of Europe, which is independent of local sovereignty and which has a jurisdiction of its own over the most important part of one of the large rivers of the world. The importance of this power is best understood by a glance at the statistics of the trade which annually passes up and down this great river.[10]

There can be no question of the success which has attended the efforts of the Commission. Before its creation the navigation of the river was not only difficult but dangerous. The numerous shoals and sand-bars necessitated the

frequent lightening of ships, and the bar which had been allowed to form across the mouth was strewn with wrecks.[11] As a result of the Commission's work the length of the river course between St. George's Chatel and the Soulina mouth has been shortened a quarter of its length—*i. e.*, from 45 to 34 miles; the minimum depth of the channel has been increased from 9 to 24 feet; the number of wrecks has been reduced from considerably over 40 per 10,000 ships to 4 per 10,000; the navigation dues have been reduced from 3.75 francs per registered ton to the present rate of 1.70 francs.[12] In addition to this the Commission has built up the port of Soulina, where it has established lighthouses, floating elevators, efficient pilot and police service, and all the facilities necessary for a modern port.

The general powers of the Commission are by no means small. It fixes and collects all tolls for the navigation of the lower river. Out of these it meets its annual expenses, which amount to some $400,000. It is thus entirely self-supporting, except that the salaries of the several Commissioners are paid by their respective countries. Its loans have been guaranteed by the great Powers whenever this has proved necessary. It has entire control of the river navigation from Braïla to the sea, without

any right of the Roumanian Government to interfere. This includes the power to make regulations controlling the navigation of all the lower Danube, and also to maintain and mark the channel. By its exclusive power to license tugs, lighters, and pilots on that part of the river, it exercises complete control over them, since, upon conviction for dishonesty or breach of its regulations, it may withdraw its licenses, in addition to imposing fines. It appoints and controls, by majority vote, a large body of employees. It has established and maintains at Soulina two hospitals; it has complete control of that port, so far as navigation interests are concerned; and has supervision of the lighthouses on the Isle of Serpents and at the mouths of the river. One of its striking features is its judicial power to impose fines and penalties for breach of its regulations,[13] although the exercise of ordinary criminal and civil jurisdiction upon the river is retained by the local Roumanian courts.

In view of the large powers accorded to the Commission and the success with which it has exercised them, it is interesting to glance at its organization.* It is composed of one member from each state, the countries represented being

* The text of the Regulations of 1879 which define the organization of the Commission will be found in Appendix B, p. 182.

Austria-Hungary, France, Germany, Great Britain, Italy, Roumania, Russia, and Turkey.* The Commissioners serve at the will of the appointing Powers, so that they can be removed at any time. Regular sessions are held twice a year, extraordinary sessions being called by special request. The votes of all the states are of equal value. The Commission acts by majority vote in all ordinary administrative questions and also in the important matter of fixing the tolls;[14] for important questions of principle, however, unanimity is required, and any member who disapproves, even though he were absent from the meeting, may within two months overturn the vote. The executive committee, which carries on the work between the regular sessions, is composed of all the members who happen to be at Galatz, which is the headquarters of the Commission. Decisions are taken in the executive committee by majority vote.[15]

As might have been expected, the work of the Commission has not been accomplished without occasional friction with the local territorial government of Roumania; but since Roumania could not but realize that the interna-

* Germany took the place originally held by Prussia, and Italy has similarly superseded Sardinia. Roumania was admitted, as the local territorial state, in 1878.

tional Commission was her best protection against Austrian and Russian encroachment, this very natural friction has led to no serious trouble. The Crown Prince of Roumania, at the fiftieth anniversary of its creation, declared that the Danube Commission, by the considerable services which it had rendered, deserved "the admiration and the gratitude of the civilized world." Certain it is that the international Commission has successfully and efficiently performed a task which would have been utterly impossible under the sole administration of the local Roumanian government.

It is too early to prophesy how the European War will affect the Danube Commission; but it seems fairly certain that whatever changes may come will end neither its usefulness nor its existence.

2.—Cape Spartel Lighthouse

A curious, if comparatively unimportant, instance of international co-operation is the agreement signed at Tangier on May 31, 1865, between Morocco and the leading European states and the United States, whereby an international lighthouse was instituted at Cape Spartel, Morocco.[16] Under this treaty the lighthouse and the land upon which it stands are to remain under the sovereignty of the Sultan,

whose flag alone shall be hoisted on the lighthouse tower; but its "superior direction and administration" is turned over to the representatives of the contracting Powers, which agree to share equally the annual expenses for its maintenance. The lighthouse is to be protected by a Moorish guard, and all the contracting states agree to respect its neutrality. There is thus set up an international establishment, supervised by representatives of all the signatory states. These shall make regulations for the direction and management of the lighthouse which cannot be changed without the consent of all.

Germany acceded to this convention on March 4, 1878, and Russia on May 31, 1899.[17]

Although this strange international lighthouse has figured very little in official reports and documents, the fact that the United States continues to make annual appropriations for its share of the cost of maintenance shows that the international arrangement still remains in successful operation.[18]

3.—International Sanitary Councils

The necessity for taking international sanitary measures to prevent the spread of plague and cholera has been responsible for another

inroad upon the current theory that a completely unrestricted independence within its own borders should be enjoyed by every sovereign state. Cholera and plague epidemics follow the great trade and pilgrimage routes; the disastrous cholera invasions of Europe during the nineteenth century have sometimes followed the sea route to the shores of the Red Sea, Egypt, and the Mediterranean, and sometimes the overland route to northern India and Afghanistan, thence to Persia and central Asia, and thus to Russia. In the last century Europe suffered from no less than six cholera invasions;* during each invasion even the very strictest sanitary precautions taken by individual states proved utterly unable to check the spread of the terrible disease, from Russia down into France, Spain, Italy, and England, and even to the United States and Central America. Some idea of the tragic character of this international scourge may be gained from a glance at the number of deaths which occurred in 1892.† In the summer of that year,

* Europe was invaded with cholera in 1830–32; 1848–51; 1851–55; 1865–74; 1884–86; 1892–95.

† The number of persons killed by cholera in 1892 in the more important countries was reckoned as follows: European Russia, 151,626; Caucasus, 69,423; Central Asian Russia, 31,804; Siberia, 15,037; Persia, 63,982; Somaliland, 10,000; Afghanistan, 7,000; Germany, 9,563; France, 4,550; Hungary, 1,255; Belgium, 961.

in the city of Hamburg cholera broke out and was well advanced before the authorities could make up their minds what the disease was; in less than a week after the official announcement of cholera was made the inhabitants were being stricken at the rate of 1,000 a day. "The town, ordinarily one of the gayest places on the continent, became a city of the dead. Thousands of persons fled, carrying the disease into all parts of Germany; the rest shut themselves indoors; the shops were closed, the trams ceased to run, the hotels and restaurants were deserted, and few vehicles or pedestrians were seen in the streets."[19]

Little wonder that upon the occasion of each recurring outbreak the nations of Europe sought to devise international measures to prevent the spread of the disease; but always conflicting "national interests" made agreement impossible, and nothing was done. It was not until thousands of lives had been sacrificed that the European states became finally convinced that a compulsory surveillance over each country's sanitary measures and an international standard of sanitary efficiency had become a matter of vital concern for the security of each state; and on January 30, 1892, the first International Sanitary Convention was signed in Venice.[20] This has been modified by succeeding confer-

ences, and by the Convention now in force,* which was signed at Paris by the United States and all the leading European states on December 3, 1903.[21]

The Convention contains elaborate regulations requiring the international notification of the outbreak of epidemic diseases and prescribes the course of action to be followed where a district or a country has become contaminated, the measures to be adopted at ports in the case of infected ships, the quarantine regulations to be established, and the special measures which must be taken in the case of pilgrimages and pilgrim ships, and provides for the payment of expenses by means of a tax on shipping. An International Bureau is provided for under Art. 181, to be set up at Paris, for the purpose of gathering and disseminating information, statistics, and reports on matters concerning infectious diseases. In accordance with the subsequent Convention of December 9, 1907,[22] a permanent bureau of this kind was established, consisting of a director, a general secretary, and a number of clerks. It publishes a monthly bulletin in French. Like the international bureaux of other Public Unions, however, it has no power of control over the

* Owing to the outbreak of the European War, the Convention of 1911–12 has not been ratified.

various states, its functions being confined to those of a purely informational and routine nature.[23]

The special Sanitary Councils provided for by the Convention are of more particular interest, because they possess actual governing power over particular localities, and therefore constitute international organs of the second type. They have power to enforce the sanitary provisions of the Convention in certain places which rest under the sovereignty of weak or indifferent governments, and which lie peculiarly in the path of international trade or pilgrimage routes. Three of these international commissions were provided for:* (1) The Conseil Supérieur de Santé at Constantinople;[24] (2) The Conseil Sanitaire maritime et quarantenaire at Alexandria;[25] and (3) The Conseil Sanitaire at Tangier.[26]

The Conseil Supérieur de Santé of Constantinople, as it was organized under the terms of the Paris Convention, and as it existed before the outbreak of the Great War in 1914, was

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* International sanitary councils were established in Constantinople in 1838, in Tangier in 1840, and in Alexandria in 1881. The International Sanitary Convention gave formal recognition to these, and intrusted them with substantial administrative duties and powers, as described in the text.

An international sanitary council of the same type has been instituted at Teheran.

to decide "on the measures to be adopted in order to prevent the introduction of epidemic diseases into the Ottoman Empire and their transmission to foreign countries." [27] The council supervised the quarantine service at Turkish ports, on the Persian Gulf, and on the Red Sea, as well as along the Persian and Russian boundaries, and saw to the fulfilment within the Turkish Empire of the latter's international sanitary obligations. It was composed of four Turkish members, and one representative of each of the signatory Powers; these were required to be holders of medical diplomas. The president was the Turkish Minister of Foreign Affairs. The decisions of the Council were executory directly; and from them there was no appeal. Still more striking was the provision that all action should be taken by a majority vote.[28]

The Sanitary Council of Alexandria is similarly organized to provide measures to prevent the introduction into Egypt, or the transmission abroad, of epidemics and infectious diseases.[29] It is composed of four Egyptian members and fourteen representatives of the signatory states, all of them to be holders of diplomas of medicine. The presidency is accorded to the representative of Great Britain.[30] It holds regular monthly meetings and such

extraordinary meetings as may prove necessary. It controls the treatment of suspected ships and passengers coming from countries subject to epidemics; it supervises the Egyptian quarantine stations on the Red Sea, the Suez Canal, and the mouth of the Nile. It exercises a permanent surveillance over the public health of Egypt, and appoints and supervises a competent corps of inspectors for this purpose. It makes regulations and establishes preventive measures against the spread of disease; it supervises and controls the execution of the sanitary regulations which it has established, and sees to the fulfilment of the international sanitary obligations of Egypt arising under the Convention of 1903.[31]

Owing to the unsettled political conditions and to the violent and petty jealousies on the part of the representatives of certain states, the Conseil Supérieur de Santé at Constantinople has not proved a success. Because of the untiring efforts of Germany to undermine English influence in Turkey, the Sanitary Council developed into a hotbed of political intrigue; the situation became so bad that in 1914 the Turkish Government issued a declaration denying the right of the Council to act at all in Turkey.

On the other hand, the Council in Alexan-

dria has successfully maintained its work.* That this is not unimportant is evidenced by the fact that it makes an annual expenditure of some $400,000 and employs a technical staff of over eighty health officers and agents.[32] The size of the yearly expenditure, however, is insignificant as compared with the number of lives annually saved by the preventive measures of the Commission.† It must be recognized, however, that, owing to the progress of events

* In the *Revue Générale de Droit International Public* (Vol. XI, p. 205) this Council was said to have "given full satisfaction in Europe."

† The official Egyptian Reports contain numerous references to the beneficial work of the International Commission. "On the 4th of November last the International Quarantine Council declared the pilgrimage as 'infected,' on account of plague, and the usual measures were adopted by the authorities. Twenty-six thousand, three hundred and eighty-nine pilgrims passed through Tor on their way home; 716 were admitted to the hospital at this place, 395 of whom were Egyptians and 321 foreigners. There were 52 deaths among Egyptian pilgrims and 65 among foreigners. This is the lowest rate of mortality yet recorded. There is an improvement of 50 per cent. in mortality figures during the last ten years." (Quoted from *British Parl. Accounts and Papers*, 1914, Vol. CI [Cd. 7358] p. 48.)

"In October cholera broke out in the Hedjaz, and the pilgrimage was declared infected. On the return of the pilgrims 32 cases occurred among the pilgrims at Tor, and accordingly the Quarantine Administration gave orders that no Egyptian pilgrim should leave Tor without being bacteriologically examined. The result was that 69 vibrio-carriers were detected. It may be noted that since 1902, when the last epidemic of cholera occurred in Egypt, the pilgrimage has been infected three times, namely, in 1906, 1911, and 1912, and that, nevertheless, cholera did not on any occasion penetrate Egypt." (From *British Parl. Accounts and Papers*, 1913, Vol. LXXXI [Cd. 6682] p. 44.)

in Egypt, the actual control has come more and more under purely British influence.[53]

4.—Albania

Perhaps the most striking, as well as the most recent, example of an international executive organ of the second type was the ill-starred Albanian International Commission of Control, the creation of which was agreed to by the London Ambassadorial Conference in July, 1913. Toward the close of the first Balkan War the fate of Albania presented a very grave international problem; besides being the storm-center of European politics, it formed the meeting-place of local Balkan territorial ambitions. Albania had just been cleared of the Turks, who had misruled it for centuries; and all Europe was filled with conflicting plans as to who should succeed to the sovereignty of the turbulent country. Servia had fought a successful war in order to reach the Adriatic through Albania; Austria and Italy were determined that Servia should not reach the Adriatic. Both Austria and Italy had their own designs upon the newly freed territory, and each was equally determined that the other should gain no foothold therein. Russia stood watching, eying suspiciously every move on the

part of Austria. The Balkan States, themselves, long familiar with the temporizing policy and divided councils of the European concert, were half persuaded to defy the great Powers; Montenegro actually did so. For a time it looked as though the long-predicted event were at hand when the Balkan tinder would set all Europe on fire. But through the able and pacificatory efforts of Sir Edward Grey, the problem was taken up and discussed at a conference of the Ambassadors of the great Powers in London; and after the diplomats had considered all possible solutions, they finally concluded that the only course which seemed likely to keep the European nations from flying at one another's throats was the creation of an independent Albania organized under and fathered by an International Commission of Control, in which each of the five great Powers, as well as Albania, should have one representative.*

*There seems to have been no formal instrument signed creating the independent state of Albania. See British Parl. 65 H. C. Deb. 5th Ser., p. 6. In response to the question whether the London Conference had signed an agreement for an autonomous state, Mr. Acland, on July 20, 1914, said: "The creation of an autonomous Albanian state rests on a resolution adopted at a meeting of the Ambassadors' Conference, over which my right Hon. Friend [Grey] presided. The proceedings of that Conference were not embodied in any formal document, and the occasion to sign an agreement did not, therefore, arise. To avoid misunderstanding I may add that the ambassadors' conference acted simply as a means of keeping the governments of the

This Commission of Control, instituted for ten years, was made responsible for the civil and financial administration of the country; its duties included the drawing up of a detailed plan of organization for all the branches of the administration of Albania. Under its advice the country was to be governed by a Prince and a Cabinet. Prince William of Wied, a German Protestant Prince, was chosen as the ruler of the new country, and on March 7, 1914, he arrived at Durazzo. A native Cabinet was appointed on March 17, 1914.

The Commission* held its first sitting on October 15, 1913, and for several months had its headquarters at Valona.[84] In order to avoid the difficulties of choosing a permanent president it was agreed that each member should hold the presidency for one month, following one another in regular turn. A further provision, which very clearly shows the unwilling-

countries there represented in close touch with one another, and that their resolutions were simply the records of the points upon which these governments were in agreement."

The question was then asked: "Am I to understand that there is no agreement as to the status of Albania?"

The answer was: "There is a written agreement as to the boundaries of Albania."

* The Commission of Control should not be confused with the International Commission to lay out the Albanian boundaries in accordance with the agreement reached at the London Ambassadorial Conference; the latter was of little interest from the viewpoint of international administration.

ness of the European states to vest their confidence in this Commission, required that, although ordinary administrative matters could be settled by a simple vote, matters which any member claimed were possessed of political importance could be settled only after reference to the home governments.[25]

From the very outset the conditions were hopeless. In the view of some the entire absence of any consciousness of national unity rendered it fundamentally impossible to create an independent autonomous Albania. "No nation can exist in modern times, when national life is in the will of the people rather than in the unifying qualities of a ruler, if there are no common ideals and the determination to attain them. Albania is without a national spirit and a national past. It is, therefore, no unit capable of being welded into a state."[26] Even the most optimistic could expect little from a state with no written or unwritten national code of law, with its very boundaries still in dispute, governed by a Commission of foreigners representing nations hopelessly at variance with one another, and surrounded by countries waiting for the first false move, to set upon it like a pack of hungry wolves.*

* See J. A. R. Marriott, in *The Eastern Question*, p. 416. In speaking of the failure of Prince William of Wied, he says: "The

Only a Cavour could have mastered such a situation. The great need was for some single, dominant, and masterful genius, who, having once caught the vision of creating a people, should hold to his course with singleness of aim and should unite, partly by the force of his own personality, partly by adherence to a strong, unified policy, a heterogeneous mass of warlike tribes into a united people with common ideals, common aims, and a common faith in their destiny and their government. If ever there was need for a strong, one-man government, it was in Albania in 1913. Instead of that there was set up a Commission of consuls, foreigners, and outsiders, all but one ignorant even of the Albanian language, representing sharply conflicting policies and interests. There could be but one result, no matter how excellent the Commission.

As the great Powers proved unwilling to make themselves responsible for the keeping of the peace in Albania,* and refused to send

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ambitious disloyalty of Essad Pasha (the Minister of War and of the Interior), the turbulence of the Albanian tribesmen, among whom there was entire lack of coherence or of unity, the intrigues of more than one interested Power, rendered his position from the first impossible."

* On June 25, 1914, in the English House of Commons, Sir Edward Grey, the Secretary of State for Foreign Affairs, was asked whether, "in view of the fact that Albanians are being massacred and ill-treated in the south of Albania, he would con-

international troops for the preservation of order, chaos ensued. In spite of the earnest efforts of the International Commission of Control to reconcile the conflicting claims and demands of the warring native factions, insurrection broke out, and open disorder. Prince William of Wied proved entirely unable to cope with the situation. On May 24, 1914, he fled incontinently from his palace at Durazzo. Although he returned a few hours later, any authority which he might have retained was gone. In the latter days of July, after the outbreak of the European War, the Prince and nearly all the members of the Commission left Albania. An attempt was made by Essad Pasha Topdani, who had been expelled from the country in May, to establish a military government; but this ended in failure. Anarchy and disorder reigned in the unhappy country until it was eventually overrun by the Austrians in the opening weeks of 1916.

The Albanian fiasco was the outcome of an

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sider the advisability of sending Consuls or other qualified persons to the areas in question for the purpose of gaining accurate information." To this Sir Edward Grey replied: "Though His Majesty's Government are responsible with the Governments of other great Powers for the creation of an autonomous Albania, I cannot admit responsibility for maintaining order there, and I do not wish to assume such responsibility by taking the measure which the hon. member suggests." (*Parliamentary Debates*, House of Commons, Fifth Series, Vol. LXIII, p. 1962.)

attempt to cure an impossible situation by a makeshift ill adapted to the needs. It may show that an international Commission is not the happiest form of organization for the fusing and unification of a disunited people; but it does not prove the futility in general of international commissions intrusted with real power in matters of vital concern to European states.[37]

5.—*Moroccan International Police*

Another instance of an international organization whose success was made impossible by the conditions under which it was created was the Moroccan International Police, organized at the Algeciras Conference of 1906. On April 8, 1904, an Accord[38] had been entered into between Great Britain and France, whereby, in return for France's allowing her a free hand in Egypt, Great Britain recognized the special interests of France in Morocco, and agreed not to obstruct any action which might be taken by France for preserving order or instituting reforms within that country. Each of the signatory countries agreed to lend to the other its "diplomatic support" in order to obtain the execution of the treaty.[39] The following year Germany, apprehensive lest this *rapprochement*

of France and England might rob her of the power to dominate the affairs of Europe which she had enjoyed since the Franco-Prussian War of 1870, and determined that the time was past when colonial arrangements could be made without her consent, executed a sudden and theatrical move. On March 31, 1905, the Kaiser without warning appeared in his yacht off the Moroccan coast at Tangier. In a terse speech that rang through the chancelleries of the world, he recognized the status of Morocco as that of a free and independent country, and sent a special message of friendship to the reigning Sultan. The message was intended and accepted as a direct challenge to the arrangements of 1904, as to which the Kaiser had not been consulted. A complicated diplomatic battle followed. Germany forced the retirement from office of M. Delcassé, the French Foreign Minister, and demanded the reference of the whole Moroccan question to a conference of all the states which had any interest in Morocco.* At the time, France's ally, Russia,

* Although the Kaiser's sudden appearance at Tangier, and Germany's subsequent insistence upon the holding of the Algeciras Conference, have been defended upon the ground that Germany's commercial interests in Morocco entitled her to an equal voice with France and England in the settlement of Morocco, a glance at the Moroccan trade statistics will show how unsubstantial is this claim. The foreign commerce from Morocco

was rendered impotent by the crushing defeats suffered in the Russo-Japanese War, and England had not yet recovered from the military failures of the South African campaign. With her own military organization wholly unprepared to push a vigorous war, France was therefore forced to swallow her humiliation and to agree to Germany's summary demands. An International Conference, in which representatives of the United States and of all the principal countries of Europe took part, met at Algeciras, a Spanish port close to Gibraltar, in January, 1906. In the negotiations which followed, Germany sought to insist upon a general international Commission of reform; but, as only Austria supported her demands, she

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for the years 1902 to 1907, expressed in millions of francs, was as follows:

	1902	*1903*	*1904*	*1905*	*1906*	*1907*
France and Algiers.....	32	34	29	30	42	34
England.....	43	45	39	23	24	25
Germany.....	9	10	10	7	7	9
Spain.....	8	7	7	3	3	3

Expressed in terms of percentages, the distribution of commerce among these nations was as follows:

	1902	*1903*	*1904*	*1905*	*1906*	*1907*
France and Algiers.....	31	31	30	46	56	45
England.....	41	41	40	29	28	33
Germany.....	9	10	11	9	8	12
Spain.....	8	7	7	4	4	4

See article by André Tardieu in the *Revue Politique et Parlementaire*, Vol. LVIII (1908), p. 232.

was forced to yield, and so finally acquiesced in intrusting to France and Spain the introduction of financial and military reforms into Morocco. Perhaps the most vital problem of all was the question of policing Morocco; and this was finally solved by the creation of a so-called "International Police."

This police force, provided for by Chapter I of the General Act of the Algeciras Conference, signed on April 7, 1906,[40] was placed nominally under the sovereign authority of the Sultan of Morocco, and was to be recruited by the Maghzen* from Moorish Mohammedans and commanded by Moorish Kaids. It was to be distributed among the eight ports open to commerce. In order to assist the Sultan in the organization of this police, French and Spanish commissioned and non-commissioned officers were to be appointed as instructors of the force, their appointment to be submitted to the Sultan for approval. For a period of five years these officers were to lend their assistance in organizing the Moroccan police, to instruct and discipline the force, to see that the enrolled men possessed aptitude for military service, and, in a general way, to oversee and

* The Maghzen (an Arabic word primarily meaning storehouse) is the central Government of Morocco; the term is also used to mean the whole administrative body of the Government,

assist the whole police administration of Morocco. In addition to the French and Spanish instructors a superior officer of the Swiss army was to be appointed by the Swiss Government, with the Sultan's approval, as the Inspector-General of the Police; his permanent residence was to be at Tangier. Without intervening directly in the command or instruction of the police, the Inspector-General was to make reports of the results obtained by the Moroccan police in the maintenance of order and security, and to transmit these reports both to the Maghzen and to the Diplomatic Corps at Tangier.

The total effective of the police troops was to be maintained at not more than 2,500, nor less than 2,000. The police regulations were to be made by the Moroccan Minister of War, the Swiss Inspector-General, and the French and Spanish head instructors, acting together, and were to be submitted to the Diplomatic Corps at Tangier before being put into operation.[41]

It was very clear from the outset that no one placed any real confidence in the permanency of this anomalous international police organ; it was no more than a makeshift, and was understood by many to be intended only as an artificial arrangement to satisfy the in-

sistent and loud demands of Germany. "The Act of Algeciras was not a solution of the Moroccan question," says one well-known writer, "it was the adjournment of the solution. 'It is not peace,' wrote a Russian publicist the day after the Conference; 'it is an armistice for five years.'"*

The subsequent events in Morocco proved the futility of the International Police Force. The Moroccan Government showed itself less and less able to hold in control the turbulent natives; one outrage after another was committed by the Mohammedans against the Europeans. "While the Diplomatic Corps at Tangier was elaborating regulations relative to the police, to expropriation, and to the importation of arms," [42] massacres were taking place at Casa Blanca and at other places within the Sultan's dominions. "On the confines of Chaouia, and

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* Augustin Bernard: *Le Maroc*, p. 332.

The negative value of the police arrangement has been admirably expressed by M. André Tardieu. "The organization of the police of the ports," he writes, "which has been intrusted to us in common with Spain by the Act of Algeciras, has a large negative value, since every other nation is thus excluded from the exercise of this power. But one can see no positive or particular benefits which can flow from it." (Translated from the *Revue Politique et Parlementaire*, Vol. LVIII (1908), p. 252.

As M. Tardieu further points out (*idem*, p. 245), certain of the interested nations took good care that the Swiss Inspector-General should be so shorn of power that he could not "become a danger."

at the gates of Rabat, the natives were settling their quarrels with their rifles, and were making raids upon troops belonging to Europeans, while the hybrid and composite police, provided for by the Act of Algeciras, was being slowly organized."[43] These native outbreaks were followed by civil war. The inevitable took place; in one district after another order was restored only by French military occupation. Finally, in the spring of 1911, in order to relieve the Sultan—besieged in his capital at Fez, by warring factions of native troops—and to protect the lives of Europeans residing there, the French advanced upon Fez, and occupied it without difficulty; and since the Sultan henceforth owed his throne entirely to the support of French troops, the French control of Morocco stood out as an accomplished fact. But if the so-called "International Police" "failed," it was because France succeeded in emancipating its colonial policy from German domination. The Moroccan episode presents rather a study in international politics than an instance of a serious attempt at international organization.

6.—The Suez Canal Commission

The Suez Canal Commission, created by the Treaty of Constantinople of October 29, 1888,

furnishes another interesting example of an international Commission formed as a mere makeshift by way of compromise between the irreconcilable views of opposing nations. The Suez Canal, because of its command over the most important trade route in the Old World between the East and the West, has been, ever since its construction, a subject of singular international concern. From the time when M. de Lesseps, a French engineer, first obtained in 1854 from Said Pasha, the viceroy of Egypt, the concession to organize a "universal company" for the construction of a ship-canal across the Isthmus of Suez, Europe has consistently maintained that this great world highway must be kept open by the Khedive of Egypt, the local sovereign, upon equal terms to the commerce of all. In 1866, a year before the canal was opened for traffic, the Sultan issued a decree declaring that the canal would be always open to every ship of commerce without distinction of flag; and in 1873 an international Commission assembled at Constantinople, upon the Sultan's invitation, and declared the navigation of the canal open upon equal terms even to warships and troopships. Upon the adoption and ratification of this declaration by the Porte and by nearly all the European

maritime Powers, the Suez Canal was placed under general European protection.

Since, however, this declaration contained no provision for keeping the canal open in the case of a war in which Turkey, the territorial sovereign, might become engaged, European opinion began to demand the internationalization of the control of the canal. The purchase by the British Government, in 1875, of the Khedive's shares in the canal, thus giving England a controlling interest, the Russo-Turkish War of 1877–78, and the British occupation of Egypt in 1882, all intensified the growing demand for internationalization. In order to come to some agreement a Conference, at which nine states, including Turkey, were represented, met at Paris on March 30, 1885.

At this Conference the various delegates found themselves in substantial agreement upon the main purpose of the treaty—*i. e.*, that the canal should be kept open to the vessels of all nations, in time of peace and in time of war, upon equal terms to all. Disagreement arose, however, upon the question of how to enforce these provisions. Because it was realized that neither the Egyptian nor the Ottoman Government might be able to compel the observance of the treaty, even if desirous of doing so, most of the Powers advocated the creation of an interna-

tional commission, with power to enforce the treaty terms and to take effective action in case they should be infringed. To this proposal the English delegate, Sir Julian Pauncefote, demurred. "The interference of an international Commission in the navigation of the canal will be not only useless, but injurious in many respects," declared the English delegate, "and it is remarkable that Great Britain, whose interests in this question preponderate (since her trade represents about 80 per cent. of the canal traffic), claims no other guarantees, as the present ones seem to her to be sufficient."

England, therefore, desiring a free hand in Egypt and wishing to be unhampered by international control, took the position that the Khedivial power should not be limited by the imposition of any international restrictions. She suggested that in case of need the Khedive might call upon the Porte and the great Powers for help, and they could then come to some agreement upon the common measures to be taken in response to the appeal.

"France, throughout the discussions and negotiations, endeavored to internationalize the canal. Great Britain, on the other hand, whilst freely admitting 'that the canal should be free for the passage of all ships in any circum-

stances,' sought safeguards for the independence and territorial rights of Egypt, of which she was and is still the guardian."[44]

After considerable disagreement concerning the international Commission, the Paris Conference came to an end in June, 1885. It was able to submit, however, as a result of its labors a draft treaty for the consideration of the interested governments. Lengthy diplomatic negotiations ensued. Finally, on October 29, 1888, a definitive treaty was signed at Constantinople by Great Britain, France, Germany, Austria, Italy, Spain, the Netherlands, Russia, and Turkey.[45]

According to the terms of the Treaty of Constantinople the international character of the canal was clearly recognized; and it was laid down that:

"The Suez Maritime Canal shall be always free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

"Consequently the High Contracting Parties agree not in any way to interfere with the free use of the canal in time of war as in time of peace.

"The canal shall never be subjected to the exercise of the right of blockade."

The international Commission which was set

up to enforce the treaty provisions was a compromise between the views of France and those of England. In order to prevent the failure of the treaty through England's refusing to attach her signature, the teeth were duly extracted from the effective international Commission which had been proposed by France; and in its place was created a nondescript Commission, to outward show supreme, but actually impotent and harmless.

"The International Suez Commission, it must be reluctantly confessed," says one French writer, "is an abortive institution."[46] "England, who wished no independent organ either in Egypt or in the vicinity," writes another, "refused to accept it, or rather has so limited its powers and its rôle that the guarantees which it gives to-day are illusory."[47]

Under Art. 8 of the Treaty of Constantinople, "the agents in Egypt of the signatory Powers shall be charged to watch over its execution." They are to meet once a year "to take note of the due execution of the treaty," and also are to hold exceptional meetings upon the summons of three of their number, "in case of any event threatening the security or the free passage of the canal." The annual meetings are to take place under the presidency of a special Commissioner nominated for that

purpose by the Ottoman Government, and are to be composed of one representative for each signatory Power and a Commissioner representing the Khedive. The special meetings are to be held under the presidency of the Doyen. It is in the powers accorded to the Commission, or rather, in the lack of them, that one sees how impotent the Commission really is. Its only powers are to "inform the Khedivial Government of the danger which they have perceived, in order that that Government may take proper steps to insure the protection and the free use of the canal. They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation."

M. Charles-Roux, in his book upon the Suez Canal, correctly appraised the international Commission when he wrote:[48] "It remains to examine the sanction accorded by the Convention to its own stipulations. I have shown that it was principally upon this point that France and England disagreed. So many concessions had to be made to the English Government in order to induce it to give its signature, so many limitations were admitted upon the principle of a permanent interna-

tional supervision, so much was whittled away from the first project, that the Commission established by Art. 8 of the treaty is nothing more than a memory, an imperfect and timid application of the ideas entertained by the French Government. It is no longer a question of a permanent Commission supervising the execution of the terms of the treaty, co-operating with the Suez Company to assure the observance of its regulations, and controlling the Powers as to the proper measures to be taken for respecting the engagements of the parties. This essential organ upon which depends the real power of the Convention is reduced to nothing but occasional meetings of the representatives of the Powers at Cairo, whenever any event may threaten the security or the free passage of the canal. The rôle of this Commission, which meets only upon the summons of three of its members, is confined to apprising the Egyptian Government of the danger which it may have sensed, in order that that Government may take under consideration the means of avoiding it. After the Commission's warning, the Khedive acts as seems best to him. As to the Powers, the Commission has no right to control them; in this respect the diplomatic agents take action, not collectively, but separately. In order to avoid

this provision of the Convention from being completely forgotten, and in order that the Commission may not in any way lose its rights by prescription, it meets in any event once a year, in order to see to the due execution of the treaty."*

"For the Commission of supervision which is without usefulness and without power," says M. Camand,[49] "there ought to be substituted a permanent international Commission, composed of members especially appointed by the Powers for this purpose, provided with police powers and with judicial powers, and able to constitute itself into an arbitral tribunal to render judgment upon the differences arising between the company and the various states

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* See, to the same effect, L. M. Rossignol, *Le Canal de Suez* (1898), p. 203. M. Rossignol says:

"In the treaty as finally drawn the Commission itself meets only exceptionally in case of danger threatening the security of the canal. And what does it do? It remarks upon the danger and gives warning of it to the Khedive, who will act just as he sees fit. The Commission has not any power of initiative. It has no hold upon the Powers except through the isolated action of its members. From the international point of view, it has no existence except in regard to the Egyptian Government; and upon the latter it has no means of bringing pressure. So that it might not fall into desuetude, it was decided that in any event it should meet once a year. In actual fact, its rôle is insignificant. The execution of the treaty then rests with the territorial authorities. We have seen that they are to employ only their own forces, and, if these are insufficient, to make appeal to the Turkish Sultan."

and to furnish a means of redress in ordinary suits."*

The Suez Commission cannot seriously be regarded, then, as ever having constituted an international governing body. Only in outward appearance was the enforcement of the treaty put under international control; in substance Great Britain was left with practically a free hand, and the Commission has amounted to little more than an empty form. In the Declaration respecting Egypt and Morocco, contained in the Anglo-French Accord of April 8, 1904, Art. 6 states that "in order to insure the free passage of the Suez Canal, His Britannic Majesty's Government declare that they adhere to the stipulations of the Treaty of the 29th of October, 1888, and that they agree to their being put in force. The free passage of the Canal being thus guaranteed, the execution of the last sentence of Paragraph 1, as well as of Paragraph 2, of Article 8 of that Treaty will

* An interesting English estimate of the value of the treaty as a whole was given by Mr. Curzon, speaking in the English House of Commons on July 12, 1898, in answer to a question put to him as to the significance of the British reservations made upon the signing of the treaty. "The terms of this convention," said Mr. Curzon, "have not been brought into practical operation." (See *Hansard*, 4th Series, LXI, p. 667.)

It may be noted that England, before the signing of the Treaty of Constantinople of 1888, made certain reservations, which do not directly concern the international Commission.

remain in abeyance."[50] This put an end even to the perfunctory annual meetings of the Commission.*

* During the European War just concluded the canal remained open to the ships of neutral, as well as of allied, countries; because of England's domination of the seas, enemy ships were not seeking passage through the canal. The number and net tonnage of commercial vessels (excluding vessels requisitioned by the military authorities) which passed through the canal in 1917 were as follows:

Nationality	*Number of Ships*	*Net Tonnage*
British	487	2,807,288
French	131	537,901
Italian	149	504,147
Greek	124	347,963
Dutch	31	124,655
Japanese	44	123,824
Norwegian	19	64,711
Swedish	7	30,091
Danish	10	29,308
Spanish	8	20,966
American	7	15,842
Other nationalities	7	28,023
Total	1,024	4,634,719

On December 17, 1914, the British Government announced in the following words that Egypt had been made a British Protectorate: "His Britannic Majesty's Principal Secretary of State for Foreign Affairs gives notice that, in view of the state of war arising out of the action of Turkey, Egypt is placed under the protection of His Majesty and will henceforth constitute a British Protectorate. The suzerainty of Turkey over Egypt is thus terminated, and His Majesty's Government will adopt all measures necessary for the defense of Egypt and the protection of its inhabitants and interests."

The outbreak of the war between England and Germany found several German merchant-ships in the ports of the Suez Canal. These evidently intended to remain indefinitely, finding the "neutralized" waters of the Suez Canal a snug harbor. The Egyptian Government took steps in October, however, to expel

The story of the Suez Commission is interesting chiefly because it affords still another illustration of the fact that no international Commission of this type can succeed so long as the signatory states are willing to accord to it only sham power.

7.—The Congo

During the last quarter of the nineteenth century the uncivilized portion of Africa in the Congo region furnished a fitting field for international regulation and control. From the viewpoint of international administration the history of the early Congo presents two phases —first, the evolution of the attempt to set up a vaguely conceived international state in that region; and, second, the definite creation, in 1885, of an International Congo River Commission, modeled upon the general plan of the European Danube Commission.

(*a*) *The Congo Free State*

The beginnings of the Congo Free State date back to 1876. In that year King Leopold II of

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these ships, after having offered them a pass to proceed unmolested to a neighboring country. The ships were towed out to the high seas beyond Egyptian waters and there duly captured by British cruisers.

See Coleman Phillipson, *International Law and the Great War*, p. 286.

Belgium invited many of the most distinguished geographers of Europe and America to attend a Conference at Brussels for the purpose of devising means for the opening up of the uncivilized regions of Africa. "The object which unites us here to-day," said King Leopold, in addressing this Conference, "is one of those which deserve in the highest degree to occupy the friends of humanity. To open to civilization the only part of our globe where it has not yet penetrated, to pierce the darkness which envelops entire populations, is, I venture to say, a crusade worthy of this century of progress."

As a result of this Conference an organization was formed under the name of *L'Association Internationale Africaine*, with its seat in Brussels, but with branches in the principal countries of Europe and America. Each nation wishing to co-operate was to assist in the raising of funds for the common object. A central executive committee of four was formed, composed of King Leopold as chairman, and one German, one Frenchman, and one American. The purpose of the Association was scientific and philanthropic; it had no political intentions. After the discovery of the Upper Congo by Stanley, in 1877, a separate committee of the International Association was organized to study

particularly the Congo regions. This branch of the Association, which took the name of *Comité d'Études du Haut Congo*, was organized at Brussels on November 25, 1878, and for all practical purposes superseded its progenitor. Stanley became its chief agent. The committee was to pursue "essentially philanthropic and scientific aims," and was not intended as a commercial undertaking. But as time passed, commercial enterprises crept in. Representatives of this committee later made treaties with the native chiefs, and adopted the flag which had been previously chosen by the *Association Internationale*. By 1884 it had established twenty-four stations on the Congo River and its tributaries. Its expenses were borne chiefly by King Leopold. Gradually the Association assumed more and more power, until at last it was recognized by the United States, on April 22, 1884, as an independent, friendly state.[51]

In the meantime, Portugal began to press territorial claims, based upon the right of prior discovery, covering much of the Congo country. These claims became the subject of considerable discussion in European chancelleries; there was danger, too, that Africa might soon become the scene of a general European scramble. In order to discuss and settle the international status

of the Congo territory and to apply to the Congo and the Niger rivers the principle of free navigation adopted at the Congress of Vienna in 1815, an international Conference gathered in Berlin upon the invitation of Prince Bismarck in the autumn of 1884, composed of representatives of the principal nations of the world, including the United States. The result of this great international gathering was the signing of the Berlin "General Act" of February 26, 1885,[52] which defined and delimited the basin of the Congo, provided for its neutralization, and opened it up, upon equal terms, to the free trade of all nations.

Although the general idea of an "international state" lay in the back of the minds of the framers of the Berlin Act, yet, inasmuch as the leadership in opening up the Congo and the financial support of the undertaking had rested so largely with the Belgian King, it was only natural that the infant state should be placed under the guardianship of King Leopold, the great nations being well satisfied that the guardian of the new state should be the king of a small, neutralized nation.

Accordingly, when the Powers allowed the Congo State to sign the Berlin Final Act as a full-fledged state, King Leopold of Belgium was chosen as its head, and the new state became

virtually an absolute monarchy. Although King Leopold granted to the Congo State a constitution of an autocratic character, as time passed he ruled it more and more as though it were his private possession.

Because the Berlin Act contained no international machinery or other provisions for insuring the execution of its terms, its stipulations to open up the Congo to the free trade of all nations and its prohibitions against monopolies proved a dead letter. The Congo, instead of constituting an international state under the control of the Powers, became the "personal appanage of the King of Belgium." Under the arbitrary rule of Leopold, who apparently administered the state "neither in the interest of the natives nor even of the economic interests of Belgium, but with the moving desire to assure the maximum of pecuniary benefit to the sovereign king,"[53] state monopolies were established and private monopolies granted to commercial companies. The natives were shamefully maltreated and exploited. So incensed did the opinion of the world finally become that the Belgian Government was forced to take action; and in 1908 the Congo Free State was formally converted into a Belgian colony, subject, not to the personal caprice of the King, but to the rule of the Belgian Parliament.

The Congo State, therefore, which is often pointed to as a striking example of the failure of an "international state," has, as a matter of fact, never been administered by an international body.

(*b*) *The International Congo River Commission*

A far more clearly defined scheme of international administration was the International Congo Commission created to execute the terms of the Berlin Act, already referred to, in regard to the Congo River. Chapter III of this Act provides for the permanent neutralization of the Congo River, which must be kept open in time of war, as in time of peace; and Chapter IV establishes in regard to the Congo River the principles of free navigation, opening it up to the ships of all nations upon equal terms, and forbidding the imposition of river tolls beyond the dues necessary for the actual cost of administration.

In order to secure the execution of the principles thus laid down, an international Commission was created, "charged to assure the execution of the dispositions of the present Navigation Act." Under the terms of the treaty the Commission was to be composed of one delegate from each of the fourteen signatory

Powers, and each delegate was to have one vote.* Action apparently was to be taken by majority vote, except that the negotiation of loans required a two-thirds vote.

The powers of the Commission were large. It was to designate "the works proper to assure the navigability of the Congo according to the needs of international commerce"; for the execution of these works it was either to take the necessary measures itself or, in places where the river was occupied by a sovereign power, to come to an understanding with the riparian state. It had power to fix the tariff of pilotage and navigation dues, and also to collect them. It was authorized to employ agents and employees for the execution of all its work and for the collection of river dues, and to pay these out of the dues collected. It had supervision over the quarantine station established at the mouth of the river. It had power to make regulations for navigation, for the river police, for pilotage, and for quarantine;† and these were to be enforced by its own agents or by the officers of the riparian states. Furthermore, "in the exercise of these powers . . . the international

* A delegate might represent more than one Power; but even in these circumstances he was to be given only one vote.

† These regulations, however, as well as the tariffs of river dues, "before being put into force must be submitted to the approbation of the Powers represented in the Commission."

Commission shall not depend upon the territorial authority." In the accomplishment of its task, it was empowered to have recourse "at need" to the war-vessels of the signatory Powers.

It is evident, therefore, that this Commission, independent as it was of territorial authority, was not to fail for lack of power. The rocks upon which this project was wrecked are found in Art. 23, which provides for the borrowing of money. After declaring that the international Commission "may negotiate in its own name loans exclusively based upon the revenues attributed to the said Commission," the article adds: "It is understood that the governments represented in the Commission cannot in any case be considered as assuming any guarantee or as contracting any engagement or responsibility in respect to said loans, unless by special conventions concluded by them to this effect." As a French writer puts it: "In making this reservation, the Conference has simply erased all possibility of credit for the Commission, since it has made of it a being, impersonal, intangible, impalpable, with not even enough capital at its command to begin the preliminary studies for the conclusion of any loan. . . . The Conference has made a liberal award of all kinds of prerogatives; it has only

forgotten to add the means of living and acting."[54]

"By this declaration of the Conference," says another writer,[55] "without the guarantee of one or more governments, no money could be raised by the international Commission, relying for its revenue on merely the tariffs of pilotage and other taxes provided by the General Act. No money could be borrowed without a guarantee, and with but a hope of extensive commerce in the future. The Conference was doubtless aware of the uselessness of such a Commission, apparently with great powers, in reality having none, but, as it often happens in such assemblies, the majority agrees on the solution of a difficulty, engaging each one to a minimum of responsibility, while losing sight of the desired end."

The International Congo Commission has never really come into existence.[56] Instead, the work of improving and regulating the navigation of the Congo was undertaken by the Congo Free State.

The Congo Commission, therefore, furnishes but another example of an international Commission, apparently clothed with large power, but, whether by carelessness or design on the part of those creating it, robbed of any real efficacy by the terms of its creation.

8.—Chinese River Commissions

Another interesting project for an international organization was the Huangpu River Commission provided for by the Final Protocol signed at Peking on September 7, 1901,[57] between China and the great Powers, at the conclusion of the Boxer troubles. The Huangpu (or Whangpoo) River connects the system of inland lagoons southwest of Shanghai with the Yangtze-kiang River and thus with the sea, its total drainage area being estimated at about 12,000 square miles. Since the efforts to improve the navigation of the river made by the Chinese Government prior to 1900 were insufficient to satisfy the foreign interests in Shanghai, the matter was made the subject of diplomatic agreement in the Peace Protocol of 1901. Art. 11 provides that the improvement of the channel of the Huangpu River shall be put under the direction of an international Commission or "Conservancy Board," which shall have power to make regulations for river navigation as well as to construct and maintain river improvements. Annex XVII to the Protocol details the powers and organization of the Huangpu International Commission.[58] Under the terms of this Annex the River Conservancy Board, to be set up at Shanghai, "will act in a

double capacity; firstly, as an agency for the rectification and improvement of the waterway; and secondly, as an agency for its control." The board is to consist of the Taotai, the Shanghai Commissioner of Customs, two members elected by the Consular Body, two members of the Shanghai General Chamber of Commerce, two members representing the shipping interests of Shanghai, one member of the Municipal Council of the International Settlement, a member of the Municipal Council of the French Settlement, and an official representative of each of the great Powers interested in Shanghai. The Board is to elect its chairman by majority vote, and similarly by majority vote to make all resolutions, ordinances, and river regulations.

Its powers are extensive. These include the entire control of river and conservancy works, even though this should involve works beyond the limit of its jurisdiction. It is given the power to make regulations and rules to control all river traffic within its jurisdiction; to organize a police and watch service for insuring the execution of its regulations and orders; to organize and control the lower Yangtze pilot service; to appoint a harbor master and staff; to expropriate private moorings; to dredge, mark, and maintain the river channel; to appoint, pay, and control all the officials and

employees necessary for its work; to fix fines for the violation of its regulations; and to impose taxes and river dues for the financing of its operations. Its ordinances even are given "the force of law for all foreigners." Its ordinances and regulations, however, and the fines fixed for violation thereof, as well as increases in the river dues, must be "submitted for the approval of the Consular Body" and receive its consent before coming into force.

As a matter of fact, beyond the appointment of the foreign commissioners, no serious steps were taken to carry out the terms of this interesting agreement.* Since China feared the creation of a foreign vested interest which might lead to misunderstanding at some future time, she signed another agreement with the Powers on September 27, 1905,[59] whereby in return for her assuming the entire responsibility and cost of the river improvement, the execution of the work on the Huangpu River was intrusted to China alone. This agreement, however, was subject to the proviso[60] that if the works were not carried out satisfactorily the Powers might revert to the original International Board as prescribed by the Peace

* The organization of the Commission was delayed owing to the failure of the Chinese Government to appoint a commissioner. See *U. S. Foreign Relations*, 1904, p. 186, *et seq.*

Protocol of 1901. The Chinese Government thereupon appointed a new Conservancy Board, consisting of the Shanghai Taotai and the Commissioner of Customs; and since that time, through the employment of foreign engineers, and under considerable pressure from the great Powers, she has substantially improved the river course.[61]

Art. 11 of the treaty of September 7, 1901, also provided for the improvement under an international Commission of the Pei-ho River, which drains the Peking and Tientsin districts; but as this Commission in 1908 delegated its powers to an executive body consisting of a representative of the Consular Body, the Customs Taotai, and the Commissioner of Customs, the case is of little interest from the viewpoint of international organization.*

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* The Municipal Council of Shanghai presents many unique features, but it is not of very great importance as an example of international organization, for the reason that its members are not agents appointed by separate countries to govern an international port, but are elected quite irrespective of nationality, as far as legal provisions are concerned, by the foreign population of Shanghai. The Council is composed of nine members, elected once a year by the foreign landowners and taxpayers in the Foreign Settlement, and has full powers of municipal administration within the settlement. (See Wellington Koo, *The Status of Aliens in China*, p. 232.) It usually contains an American and a German, as well as English representatives; the majority of the officials appointed by it are said to be English. (See Grünfeld, *Hafenkolonien und kolonicähnliche Verhältnisse in*

9.—Spitzbergen

An exceedingly interesting international problem is presented by the strange case of Spitzbergen. The Spitzbergen Archipelago, situated between North Greenland and Franz Joseph Land in 80° north latitude, and comprising some fifty thousand square miles, has for centuries existed as a *terra nullius*, too far north for human occupation, and apparently too valueless to be considered worth claiming by any Government. Since 1900, however, when it was discovered that valuable coal deposits on the islands could be profitably worked, the situation has changed; and with every succeeding year the islands have increased in importance. Large companies have been formed in several countries* to work the Spitzbergen coal-mines; rich mineral ores have been dis-

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China, Japan, und Korea, p. 190.) The Shanghai International Settlement Land Regulations, which define the municipal government, may be found in Hertslet's *China Treaties*, Vol. II, pp. 666 *et seq.* (See also *Treaty Ports in China*, by En-sai Tai, Columbia Uni., 1918.) The foreign population of the International Settlement in Shanghai in 1905 was as follows: British, 4,281; Japanese, 2,157; Portuguese, 1,331; American, 991; German, 785; French, 393; Russian, 354; Austro-Hungarian, 158; Italian 148; Spanish, 146; Danish, 121; other foreign nationalities, 692; total, 11,557. (See H. B. Morse, *The Trade and Administration of the Chinese Empire*, p. 240.)

* These companies are chiefly American, English, Swedish, and Norwegian.

covered;* wireless stations have been erected; and the proximity of the islands to the Archangel trade route makes them of importance as a possible submarine base. During the summer of 1918 there were taken from Spitzbergen no less than 55,000 tons of coal.

After numerous efforts to reach some international understanding upon the status of Spitzbergen, it was agreed, in reply to a diplomatic note sent out by Norway on May 5, 1909, to all the Powers interested, that the archipelago should be internationalized, and that delegates of Norway, Sweden, and Russia should prepare a draft Convention upon this basis. The draft thus prepared was then to be considered by an international conference

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* As to the value of the Spitzbergen iron ores, Mr. Fraser, in a letter printed in the *London Times* on March 12, 1918, p. 5, says: "Taking the magnetite alone, the deposits cover several square miles of territory, being of an extent far surpassing those of Luossavara, Gellivare, Kiruna and Sydvaranger combined. Specimens I have myself brought back therefrom average over 60 per cent. of metallic iron (equal to No. 1 Gellivare ore), and the average of assays I have seen in the London offices of the company exceed this considerably.

"There are literally huge accumulations of loose ore, broken off the main deposits by frost action, ready for collection and shipment, besides the ore contained in the fast rock, which extends for over twenty square miles. The deposits are situate less than one and a half miles from the sea—deep water and good anchorage—and the water is open for from four to five months each year, without mechanical appliances. The work of extraction can go on all the year round."

of all the interested Powers, and modified or adopted by the latter as they might see fit. To this end, upon the invitation of the Norwegian Government, Swedish, Russian, and Norwegian representatives sat in conference at Christiania from July 19 to August 11, 1910, and drew up a very interesting draft convention. This proposal was then submitted to the Cabinets of the interested states for modification and correction; and in January, 1912, the delegates of Norway, Sweden, and Russia again met together in Christiania in order to incorporate in the agreement such suggestions and modifications as seemed practicable.

The draft convention as finally adopted by them in 1912[62] creates a "neutral" Spitzbergen, open to all nationalities and incapable of being subjected to the sovereignty of any state.[63] It sets up as the governing organ an international Commission with complete sovereign power. The latter is to be composed of three members, Norway, Sweden, and Russia, each appointing one representative for a term of six years. The presidency is to be exercised in turn by each of the members for a period of one year, in the alphabetical order of the names of the states which they represent; and the seat of the Commission is to be in the country from

which the president for the time being comes. Unanimity is required for the decisions of the Commission, except when sitting as a final Court of Appeal from the judgments of the Police Commissioner or of the Justice of the Peace.

The country is to be controlled by a corps of International Police under the supervision of a Police Commissioner; the latter is to be appointed by the international Commission for a term of six years,* and subject to its control. The Police is to be subject to rules laid down by the Commission. The Police Commissioner is also to enforce penalties for violation of the general *règlements* established by the Commission.

Since it was not feasible to establish a civil and criminal code of law for Spitzbergen, the Convention provides for national courts, which are to exercise criminal jurisdiction over the subjects of their own countries, and civil jurisdiction where the affair concerns only their own nationals, or where the defendant is a national. In addition to these national courts, however, there exists a Justice of the Peace, appointed by the international Commission, who has jurisdiction over special cases, such as those con-

* His nationality is recommended to be the same as that of the majority of the inhabitants.

cerning immovables situated in Spitzbergen.[64] Final appeal may be taken from the decisions of the Police Commissioner or of the Justice of the Peace to the international Commission. The rules of law applied throughout are to be in accordance with the principles of private international law, the provisions of the Spitzbergen Convention, and the general principles of justice and equity. The Commission is to determine the rules of procedure; it is also to lay down penalties for violation of the *règlements* which it makes in accordance with the provisions of the Convention.

Other articles provide for the complete neutrality of Spitzbergen in time of war, and for the arbitration of all matters of dispute arising from the Convention.

On June 16, 1914, an international Conference composed of representatives from all the interested states met in Christiania and proceeded to consider this draft convention;[65] but the sudden outbreak of the European War put an end to their deliberations before they had come to any conclusion. The result is that Spitzbergen remains to-day legally a country without a government—a veritable No Man's Land.

During the war, Spitzbergen has come to be of such importance that it figured in the Russo-German Peace Treaty signed at Brest-Litovsk

on March 3, 1918;* and the whole question will doubtless come up for final determination at the Peace Congress following the war.[66]

10.—The New Hebrides

The New Hebrides, strictly speaking, do not present a case of international administration, but rather of that peculiar form of government called "Condominium," where two or more nations share sovereignty over a single territory.

* The text of Chap. 9, Art. 33, of the Russo-German Treaty of March 3, 1918, reads as follows: "The contracting parties will direct their efforts to the end that the international organization of the Spitzbergen Archipelago contemplated in the Spitzbergen Conference of the year 1914 will be carried out on a footing of equality between the two parties.

"To this end, the governments will request the Royal Norwegian Government to bring about the resumption of the Spitzbergen Conference as soon as possible after the conclusion of the general peace."

The *London Times* of March 11, 1918, p. 9, thus comments upon the matter:

"It now appears that Germany, who loses sight of nothing, has not forgotten that Spitzbergen is rich in mineral wealth and is believed to contain gold as well as coal. In some of the numerous versions of the peace treaty recently signed at Brest-Litovsk, which the Bolshevists say they accepted without examination, there is a curious clause which relates to the future of Spitzbergen. So far as we can judge, the clause implies that the Germans and the Bolshevists decided to share Spitzbergen between themselves. . . . The Bolshevists may give away Russian provinces if they choose, but they cannot hand over to Germany a region where the Russian flag has never flown. Herr von Kühlmann might as well persuade M. Trotsky to give him the North Pole."

Since, however, this bears indirectly upon the subject of international organization, it may be of interest to glance at this most interesting of the existing cases of Condominium.

The idea of a joint government by France and England over the New Hebrides was born of the Anglo-French Accord of 1904. This notable agreement, by an exchange of territorial rights in various parts of the world, wiped out old scores and brought two great nations from a long-standing attitude of mutual distrust, which had more than once threatened war, into a new-found friendship, which ten years later helped to save the world from German domination. By the terms of the Accord, France gave to England a free hand in Egypt, and received in return similar privileges for herself in Morocco. She also surrendered to Great Britain certain rights upon the shores of Newfoundland, in return for a pecuniary compensation and territorial cessions near French Gambia and east of the Niger. In Siam, a country in which the two nations possessed conflicting claims, France agreed that British influence should be recognized to the west of the Menam River in return for the British recognition of her own paramount influence to the east of the river. Madagascar gave trouble because the tariff duties put in force after her

annexation by France were claimed to be in contravention of the previous treaty of free trade made between an independent Madagascar and England; England now formally and definitively withdrew her protest in view of certain compensations which she received relating to Zanzibar.

There was left only the question of the Hebrides; and this could not be settled so easily. The New Hebrides form a group of islands north of New Zealand in the West Pacific Ocean, of volcanic formation, rugged in outline and rich in vegetation. The bulk of the population consists of natives, the European settlers being comparatively few. A division of the islands seemed particularly difficult, because the French and English inhabitants and interests were so commingled that no geographical division would have been satisfactory to the subjects of either nation. Accordingly, the two governments agreed "to draw up in concert an arrangement which, without involving any modifications of the political *status quo*, shall put an end to the difficulties arising from the absence of jurisdiction over the natives of the New Hebrides."[67]

The "arrangement" provided for in the Accord of 1904 was definitely drawn up and signed in London on October 20, 1906.[68] This Conven-

tion establishes the New Hebrides Group as a "region of joint influence, in which the subjects and citizens of the two signatory Powers shall enjoy equal rights of residence, personal protection, and trade, each of the two Powers retaining jurisdiction over its subjects or citizens, and neither exercising a separate control over the Group." Great Britain and France are each to be represented within the Islands by a High Commissioner, and each of these is to be independently appointed by his respective government. Each is to have under his orders one half of the island police force; these two forces are to be united under the joint direction of the two Commissioners only when it becomes necessary to employ together some or all of both divisions of the force. Legislative power to issue regulations, binding upon all inhabitants and enforced by penalties not exceeding five hundred francs, is vested in the two High Commissioners acting jointly. A number of public services are to be undertaken in common; these include police, post and telegraph, public works, ports and harbors, buoys and lighthouses, public health, and finance. These are to be organized and directed by the High Commissioners and their delegates jointly.

Judicial power is divided between French and English national courts and a specially

constituted Joint Court. French and English citizens are subject to their respective courts; foreigners must choose within six months between the French and the English legal systems. These national tribunals have ordinary criminal jurisdiction, and civil jurisdiction where no land controversies are in question. The Joint Court has jurisdiction over all suits respecting land, over civil suits between natives of the islands and foreigners, over criminal offenses committed by natives against foreigners, and over violations of the provisions of the Convention itself or of the *règlements* made in conformity to it. The Joint Court is composed of three judges—one English, one French, and one foreigner to be appointed by the King of Spain. The foreigner is to act as president of the Court.

The joint administration has not worked well. The expedient of Condominium, in itself a somewhat doubtful experiment, was resorted to only as a more or less temporary makeshift. "That Condominium ought to be no more than a temporary régime is certain," says a French writer of recognized authority. "Facts prove that, except for three rare exceptions, which are explained by special considerations, this type of government is necessarily of a limited duration. But this arrangement, which was imposed for want of a definitive solution,

was due to a deliberate desire on the part of the contracting Powers; neither has given up the hope of annexation, or at least of an advantageous division; they agreed to leave the future open, and, that there might be no doubt as to their intention, they thought it proper to stipulate—that which goes without saying—that the convention would remain in force only until some new agreement might be formed (Art. 68)."[69]

The arrangements of this Convention are particularly unfortunate. The provisions seem calculated to increase, rather than to dispel, discord. In the Joint Court, for instance, both French and English law are to obtain; and it has sometimes happened that the English judge was ignorant of French law, the French judge of English law, the Spanish judge of both the English and French law and languages, and all three judges of the native language and customs. Owing to dissensions and misunderstandings, to the laxity of enforcement of the laws and to race feeling, conditions upon the islands have become so strained that it seems to be generally acknowledged that the present arrangement should be terminated.*

* "Among the most glaring defects of the existing administration are (*a*) the over-insistence of the Joint Court on pure technicalities; (*b*) the inability of the Joint Court to see that its sentences

On June 10, 1914, a Conference was held between representatives of France and England to devise some means for remedying the defects of the Condominium government as revealed by the experience of the preceding eight years.[70] The breaking out of the European War, how-

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are carried out; (*c*) the leniency of the Joint Court in inflicting fines, and the excessive leniency of the French resident officials in remitting or neglecting to collect the fines inflicted. To allege these defects as the main cause of the situation which has developed in the islands is less inadequate than it seems, for they constitute jointly a practical freedom from any restraint of law, particularly in the remoter islands, which allow the undisciplined and unprincipled settler and trader full scope for indulging the worst that is in him. . . .

"These defects are not inherent in the Condominium. They arise partly from the habit of thought of certain judges and officials, partly from weaknesses in the Convention which are perfectly remediable without destroying it or hurting any national pride. To attack the Condominium, therefore, because of them is extravagant and irrelevant. The mere alteration of Art. 12 to give the Joint Court jurisdiction over crimes committed by non-natives against natives, and of Art. 19B to provide that Court with its own police capable of executing its own sentences, would in a short time bring about unwonted order in many of the islands. Provision should also be made to obliterate the Court's remarkable distinctions between kidnapping and illegal recruiting, and between employers and their agents. . . .

"With the amendments mentioned, the intention of those who framed the original Convention will for the first time stand some chance of being carried out, and the Condominium will be given a fair trial, which it has never yet had. . . . If the hands of justice are not strengthened, as they so easily can be, two great and friendly nations may find themselves embroiled in a mean squabble over the bodies of victimized and outraged natives at the other end of the world." (From the *London Times* of February 26, 1914, p. 5. See also the *Nineteenth Century*, Vol. LXXV, p. 932.)

ever, prevented further developments in the modification of the government of the New Hebrides.[71]

The only other notable example of modern Condominium is the case of the Soudan, placed by the treaty of January 19, 1899, under the undivided sovereignty of Great Britain and of Egypt;* but as the rights of the latter were purely nominal and theoretical, this instance is of very minor importance.[72]

NOTES

[1] The words of the preamble of the Act of November 2, 1865, are as follows: "And the said Commission, acting in virtue of this mandate, having succeeded, after nine years' work, in realizing important improvements in the system of navigation—notably by the construction of two piers at the mouth of the Soulina branch, which have had the effect of admitting into this *embouchure* vessels of a large draught

* The agreement of January 19, 1899, between Great Britain and Egypt provided that "the supreme military and civil command in the Soudan shall be vested in one officer, termed the 'Governor-General of the Soudan.' He shall be appointed by Khedivial Decree on the recommendation of Her Britannic Majesty's Government, and shall be removed only by Khedivial Decree, with the consent of Her Britannic Majesty's Government." Laws, ordinances, and regulations for the Soudan were to be made, altered, or abrogated only by Proclamation of the Governor-General, without which no Egyptian law or decree could have effect within the Soudan. No consuls were to be allowed in the Soudan without the previous consent of the British Government. (For the text of this Agreement, see Hertslet's *Commercial Treaties*, Vol. XXI, p. 356.)

of water—by the execution of works of correction and cleansing in the course of the same branch—by raising wrecks, and establishing a system of buoys—by the erection of a lighthouse at the mouth of the St. George—by the institution of a regular lifeboat service, and by the creation of a seaman's hospital at Soulina—lastly, by the provisional regulation of the different services connected with the navigation between Isaktcha and the sea." (See Hertslet's *Commercial Treaties*, Vol. XII, p. 884.)

[2] Hertslet's *Commercial Treaties*, Vol. XII, p. 884.

[3] *Ibid.*, p. 919.

[4] Art. 21 of the Public Act of November 2, 1865. Hertslet's *Commercial Treaties*, Vol. XII, p. 891.

[5] Art. 7 of the Treaty of London of March 13, 1871. Hertslet's *Commercial Treaties*, Vol. XIII, p. 747.

[6] Hertslet's *Commercial Treaties*, Vol. XII, p. 1206.

[7] Martens, *Nouveau Recueil Général* (2nd Series), Vol. III, p. 463.

[8] Art. 1 of Treaty of March 10, 1883. Hertslet's *Commercial Treaties*, Vol. XV, p. 1071.

The treaty of 1883 also provided for the creation of a new "Mixed Commission of the Danube" for the purpose of supervising the execution of the regulations made for that portion of the river between Hungary and Braïla, and with power to act by majority vote; this Commission was to be composed of representatives of Austria-Hungary, Bulgaria, Roumania, and Servia, and also a representative of the European Commission. But as Roumania, the

local sovereign most interested, was not permitted to take part in the making of the treaty, the provision for the creation of the "Mixed Commission" has necessarily remained a dead letter.

For the text of this provision, see Art. 96 of the Annex to the treaty of March 10, 1883, in Hertslet's *Commercial Treaties*, Vol. XV, p. 1087.

[9] See text of regulations in Hertslet's *Commercial Treaties*, Vol. XXVI, p. 862. Some idea of the scope of the Commission's power may be seen by a glance at these regulations, covering 194 articles. Art. 1 states: "L'exercise de la navigation sur le Bas-Danube, en aval de Galatz, est placé sous l'autorité de l'Inspecteur de la navigation et du Capitaine du Port de Soulina."

The Chapter headings are as follows:

Dispositions Générales.

Titre I—De la Police de la Rade et du Port de Soulina.

Chap. 1—De la Police de la Rade de Soulina.
" 2—De la Police du Port de Soulina.
" 3—Dispositions communes à la rade et au Port de Soulina.

Titre II—De la Police du fleuve.

Chap. 1—Règles générales pour la navigation sur le fleuve.
" 2—Règles de barre et de route.
" 3—Règles pour le chemin de halage.
" 4—Règles pour la navigation pendant la nuit ou par un temps de brouillard.

Chap. 5—Règles pour les bâtiments au mouillage.
" 6—Règles spéciales pour les radeaux et trains de bois.
" 7—Règles pour les cas d'avarie, d'échouement et de naufrage.
" 8—Règles pour le jet du lest.
Titre III—De la Police du Port de Toultcha.
Titre IV—Du service du pilotage.
Chap. 1—Dispositions communes au pilotage à l'embouchure et dans le cours du fleuve.
" 2—Pilotage à l'embouchure.
" 3—Du pilotage dans le cours du fleuve.
Titre V—Du service des allèges.
Chap. 1—Règles générales.
" 2—Des opérations d'allège locales.
" 3—Des opérations d'allège par cabotage.
" 4—Dispositions spéciales au cas de force majeure.
" 5—Dispositions spéciales au cas de fraude.
Titre VI—Du remorquage.
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" 2—Du remorquage a l'embochure.
" 3—Du remorquage dans le fleuve.
Titre VII—Dispositions spéciales à observer dans l'intérêt des travaux d'amelioration du Bas-Danube.
Titre VIII—Des contraventions.
Chap. 1—Fixation des amendes.

Chap. 2—Règles pour l'application des amendes.

[10] For a concise account of the Danube Commissions, see Bonfils, No. 528. For the texts of most of the Danube treaties between 1856 and 1871, see indexed list in Hertslet's *Commercial Treaties*, Vol. XII, pp. 131, 132 of Index.

[11] For an interesting account of the dangers of Danube navigation before 1856 and of its robber pilots and lightermen, see *British Parl. Accounts and Papers* (1907), Vol. LXXXVII [Cd. 3646], p. 2.

[12] *British Parl. Accounts and Papers* (1907), Vol. LXXXVII [Cd. 3646], p. 7. Report concerning the Danube Commission.

[13] For a list of fines and penalties, see Title VIII of the Regulations of November 10, 1911. Hertslet's *Commercial Treaties*, Vol. XXVI, p. 862.

[14] Art. 16 of the Treaty of Paris of March 30, 1856.

[15] For further information concerning the Danube Commission see Demorgny, *La Question du Danube* (1911). See also Maican, *La Question du Danube* (1904), p. 222 *passim*. For details of organization see the Regulation fixing the Order of Procedure of the European Commission of the Danube, November 10, 1879. (Sturdza, *Recueil des Documents relatifs à la liberté de Navigation du Danube*, p. 127.) For the text of the Regulations, see Appendix B, p. 180.

[16] For text of treaty, see de Clercq, *Recueil des Traités*, Vol. IX, p. 291; English translation in *American Journal of Int. Law*, Vol. VI, Sup. p. 14.

For American correspondence relating thereto, see *U. S. For. Rel.* (1865) (part 3), p. 350.

[17] For texts of these accessions see Hertslet's *Commercial Treaties*, Vol. XIV, p. 375, and Vol. XXI, p. 711.

For the exchange of notes between Great Britain and France in 1892, respecting the establishment of a signal station at Cape Spartel, and the conditions under which its management would be undertaken by Lloyd's Committee, see *Brit. and Foreign State Papers*, Vol. LXXXIV, p. 10.

[18] See *U. S. Statutes at Large* (64th Congress), Vol. XXXIX, pp. 254, 1050.

[19] *Encyclop. Britannica* (11th ed.), Vol. VI, p. 265.

[20] Martens, *N. R. G.* (2nd Series), Vol. XIX, p. 260.

[21] Martens, *N. R. G.* (3rd Series), Vol. I, p. 78.

[22] Martens, *N. R. G.* (3rd Series), Vol. II, p. 913.

[23] See the Resolutions of the Committee of Ways and Means of the Sanitary Conference of Paris in Martens, *N. R. G.* (3rd Series), Vol. I, p. 189. The office has suffered owing to the refusal of Germany and Austria to take any part, because the office was not established in Berlin.

[24] Martens, *N. R. G.* (3d Series), Vol. I, p. 156, Arts. 165–175.

[25] *Ibid.*, p. 155, Arts. 162–164. Also, see Annex III of the Sanitary Convention of January 30, 1892, and the Khedivial Decrees of 1893 and 1894, Martens, *N. R. G.* (3rd Series), Vol. I, pp. 169, 177, and the Ministerial Order of 1893, *ibid.*, p. 181.

[26] *Ibid.*, p. 161, Art. 176.

[27] Art. 165 of the Paris Convention.

[28] Art. 170.

[29] Art. 1 of the Khedivial Decree of June 19, 1893.

[30] Reinsch, P., *Public Int. Unions*, p. 59.

[31] The Conseil Sanitaire at Tangier consists of all the foreign envoys in Morocco. See Oppenheim's *Int. Law*, Vol. I, p. 515, note 3; Liszt, *Das Völkerrecht* (10th ed.), Book II, Sect. 18, III, p. 158.

[32] Woolf, *Internat. Government*, pp. 148 *et seq.*

[33] For the International Council of Sanitation for the Danube River, instituted at Bucharest in 1881, see Art. 6 of the Acte additionnel à l'acte public du 2 novembre, 1865, pour la navigation des embouchures du Danube, Martens, *N. R. G.* (2nd Series), Vol. VIII, p. 207.

[34] The membership of the Commission was as follows:

Austria-Hungary—Herr Aristoteles Petrovitch (Former consul at Valona).

France—M. Krajewski (Consul at Scutari).

Germany—Dr. J. Winckle (Consul-General at Trieste).

Great Britain—Harry H. Lamb, C.M.G. (Consul-General at Salonika).

Italy — Commandatore A. Leoni (Consul-General at Bastia).

Russia—M. Petraieff (Consul at Monastir).

Albania—Midhat Bey Frachery.

[35] *Fortnightly Review*, Vol. XCV (New Series) (1914), p. 469.

[36] Gibbons, *The New Map of Europe*, p. 364.

[37] See interesting articles on the Albanian question in the *Fortnightly Review*, Vol. XCVI (New Series), (1914), p. 1, Dillon, E. J., and the *Contemporary Review*, Vol. CVI, p. 277.

[38] For the text of the Anglo-French Accord see Hertslet's *Commercial Treaties*, Vol. XXIV, p. 400; and for the text of the Secret Articles signed at the same time, but not published till considerably later, see *ibid.*, Vol. XXVI, p. 126.

[39] Art. 9 of the Declaration.

[40] See text of treaty in Martens, *N. R. G.* (2nd Series), Vol. XXXIV, p. 238. For an English translation, see *American Journal of International Law*, Vol. I, Sup. p, 47.

[41] For the text of the Règlements, subsequently made, for the government of the Moroccan International Police, see Deloncle, Léon, *Statut International du Maroc*, p. 65. For the text of the agreement between the Inspector-General of the Police and the Moroccan Government, whereby Col. Arnim Müller was created Inspector-General, see *ibid.*, p. 97.

[42] See *Rapport* de M. Pierre Baudin, sénateur, au nom de la commission sénatoriale chargée d'examiner la convention franco-allemande du 4 novembre, 1911, p. 16.

[43] Translated from Albin, Pierre, *Le Coup d'Agadir*, p. 107.

[44] White, A. Silva, *The Expansion of Egypt*, p. 337.

An extract from the report of the subcommittee

which studied the question of an international Commission, concisely sums up the views of the different delegates:

"Le délégué de la Grande-Bretagne a objecté que l'institution d'une commission internationale de surveillance serait incompatible avec les bases contenues dans la circulaire de lord Granville, qui confère à la seule puissance territoriale le soin de l'exécution du traité; que d'ailleurs le besoin d'un organe de surveillance lui paraissait très contestable et que, dans son opinion, la création d'un tel organe entraînerait beaucoup plus d'inconvénients que d'avantages.

"Les délégués d'Allemagne, d'Autriche-Hongrie, de France et de Russie, auxquels se sont joints le délégué de la Turquie et ultérieurement le délégué des Pays-bas, ont soutenu, au contraire, que la liberté du canal ne serait qu'un vain mot si la puissance territoriale ne participait pas aux servitudes mutuelles qu'on se propose d'établir et qu'une commission internationale était non seulement utile, mais nécessaire. Ils ont cité à l'appui de leurs affirmations les mesures prises d'un commun accord en ce qui concerne la navigation des fleuves internationaux et particulièrement celle du bas Danube, en insistant sur ce point que, s'il a été jugé utile d'établir un organe collectif de surveillance pour le bas Danube, à plus forte raison il est indispensable de prévoir des mesures analogues pour une grande voie de navigation internationale où les intérêts du monde entier sont en jeu."

For an account of the Paris conference see an article by M. Asser in the *Revue de Droit International*, Vol. XX (1888), p. 529.

[45] See text of the treaty in Martens, *N. R. G.* (2nd Series), Vol. XV, p. 557. For English translation, see *Amer. Jour. of Int. Law*, Vol. III, Sup. p. 123.

[46] Translated from Camand, L., *Étude sur le régime juridique du canal de Suez* (1899), p. 235.

[47] Translated from Rossignol, L. M., *Le canal de Suez* (1898), p. 206.

[48] Translated from Charles-Roux, J., *L'isthme et le canal de Suez* (1901), Vol. II, p. 113.

[49] Translated from Camand L., *Étude sur le régime juridique du canal de Suez*, p. 235.

[50] Martens, *N. R. G.* (2nd Series), Vol. XXXII, p. 17.

For an account of the effect upon Egypt of the Anglo-French Accord of 1904, see an article by Morel, A., in the *Revue Générale de Droit International Public*, Vol. XIV (1907), p. 405.

[51] Malloy, *Treaties*, Vol. I, p. 327.

For an account of the early history of the Congo, see Reeves, J. S., *Johns Hopkins University Studies in Hist. and Polit. Science*, Vol. XII, Papers 11, 12; *Amer. Jour. Int. Law*, Vol. III, p. 99; Rose, J. Holland, *Development of the European Nations*, Vol. II, Chap. VIII.

[52] See the text of the General Act in Martens, *N. R. G.* (2nd Series), Vol. X, p. 414.

For an English translation, see *Amer. Jour. of Int. Law*, Vol. III, Sup. p. 7.

Although the General Act of Berlin was signed by the delegates of the United States, it was never submitted by President Cleveland to the United States Senate for ratification, since he held that "an engagement to share in the obligation of enforcing neutrality in the remote valley of the Congo would be an alliance whose responsibilities we are not in a position to assume." Message to Congress, December 8, 1885. See *U. S. For. Rel.* (1885), p. ix.

[53] Quoted from a summary by a professor in the University of Brussels of a Report made by a Commission of Investigation, appointed by King Leopold himself. (See Bliss, *Encyclopedia of Social Reform*, p. 270.)

[54] Translated from article by Rolin-Jaequemyns in *Revue de Droit Int.*, Vol. XXI (1889), p. 186.

[55] Reeves, J. S., in the *Johns Hopkins University Studies in Hist. and Polit. Science* (1894), Vol. XII, Papers 11 and 12, p. 44.

[56] Liszt: *Das Völkerrecht* (10th ed.). Sect. 18, II, 3, p. 157.

See also *Revue de Droit International*, Vol. XXI (1889), p. 185.

[57] For text of treaty see Martens, *N. R. G.* (2nd Series), Vol. XXXII, p. 94.

[58] For an English translation of Annex XVII see *Brit. and Foreign State Papers*, Vol. XCV, p. 621.

[59] *U. S. For. Rel.* (1905), p. 122; *Reports of Chinese Imperial Maritime Customs*, Misc. Series No. 30, Vol. II, p. 150.

[60] Art. 12,

[61] *U. S. For. Rel.* (1910), p. 353 *et seq;* also, *The China Year Book* (Bell and Woodhead), (1916), p. 651.

[62] For the text of this draft Convention see *Jahrbuch des Völkerrechts*, Vol. I, p. 142; also *R. G. D. I. P.*, Vol. XX, p. 277.

[63] "Art. 1: Le Spitzberg demeurera terra nullius. Il ne pourra, ni en tout, ni en partie, être annexé par aucun État, ni être soumis, sous quelque forme que ce soit, à la souveraineté d'une puissance quelconque.

"Art. 2: Le Spitzberg sera ouvert aux resortissants de tous les États conformément aux dispositions de la présente convention."

[64] See the list of special cases in Art. 21.

[65] See the *London Times*, February 18, 1914, p. 7, for the calling of the Conference.

[66] On the juridical status of Spitzbergen see article by Secretary Lansing in *Amer. Jour. of Int. Law*, Vol. XI, p. 763. Also articles in *R. G. D. I. P.*, Vol. XV, p. 80; *ibid.*, Vol. XVI, p. 117; *ibid.*, Vol. XX, p. 277. As to current feeling in England regarding Spitzbergen, see the letter from the Royal Geog. Soc. to the British Government, in *London Times*, March 13, 1918, p. 5, together with Mr. Balfour's reply.

[67] See Declaration of April 8, 1904, between Great Britain and France. Text in Hertslet's *Commercial Treaties*, Vol. XXIV, p. 391.

[68] See text of Convention in Martens, *N. R. G.* (3rd Series), Vol. I, p. 523. For an informing article upon the New Hebrides see an article by M. Politis, in *R. G. D. I. P.*, Vol. XIV, p. 689. See also *British Parl. Accounts and Papers* (1907), [Cd. 3288], Vol.

LVI, p. 649, and *ibid.* [Cd. 3525], Vol. LVI, p. 737. For the Exchange of Notes between Great Britain and France of Aug. 29, 1907, containing the General Instructions to the High Commissioners from their respective governments, see Hertslet's *Commercial Treaties*, Vol. XXV., pp. 290 *et seq.*

[69] Translated from an article by M. Politis in the *Revue Générale de Droit International Public*, Vol. XIV, p. 756.

[70] See names of delegates in the *London Times*, June 11, 1914, p. 7.

[71] In the *London Times* of September 2, 1914, p. 10, it was announced that "Mr. Glynn, the Australian Minister of External Affairs, has been informed that the draft agreement between the British and French governments regarding amendments in the control of the New Hebrides is now on its way to Australia. Mr. Glynn says the amendments are substantial. The Australian Government will be given an opportunity to consider the draft before its ratification."

[72] For other cases of Condominium see Bonfils, No. 344[1]. For an account of the Condominium of Moresnet, on the frontier between Belgium and Prussia, see article by Dollot in *Annales des sciences politiques* (1901), p. 620; also see *Revue Générale de Droit International Public*, Vol. XVI, p. 121.

CHAPTER V

INTERNATIONAL ORGANS WITH POWER OF CONTROL OVER THE MEMBER STATES—TYPE III

IF the instances are few where sovereign states have been willing to create an international organ of the second type, with substantial power over some local question in a weak or backward state, the instances where they have been willing to create an international organ with power to control their own actions are still more rare. States are so extravagantly tender of their own sovereignty that nothing but compelling necessity will produce an organ of the third type. The most striking example of such an organ, and one that has been highly successful in accomplishing the object for which it was set up, is the International Sugar Commission.

1.—The International Sugar Commission

During the latter half of the nineteenth century it became the custom on the part of the leading European States to stimulate the grow-

ing and exporting of sugar by granting large state bounties to the exporters; the result was the flooding of the world's sugar-markets with artificially cheapened sugars and the consequent drying up of the natural sources of world supply. To England, the principal sugar-buying nation of Europe, the question was of particular concern. The overstocking of England with bounty-fed sugars threatened to kill the West Indian sugar industries, which were dependent for their markets mainly upon English consumption; and economists argued that the severe injury to the West Indies resulting from the killing of their staple industry would not be offset by the benefit to England of cheaper sugar. Furthermore, the substitution of an artificially nourished for a natural sugar trade promised to create a monopoly which would ultimately spell higher prices. To the continental nations, subjected to heavy drains upon their treasuries by the large bounties which they found it necessary to pay in order to export their sugars and thus maintain their industries, the bounty system was becoming unbearable. Yet no sugar-producing nation, acting separately, could possibly escape the system which was proving so burdensome to all.

As early as 1864 Mr. Gladstone proposed to

take international steps to abolish the sugar bounties; but the Convention of 1864, which was secured through his efforts, failed in its purpose because it contained no penal clause for enforcing its provisions; and the matter was of too vital an interest financially for the member states not to find easy means of evasion. A second conference was held in 1875, and a Convention drafted in 1877, which also proved ineffective for lack of a penal provision. Meanwhile, the bounties were increasing by leaps and bounds. Efforts to reach a common agreement on the matter of sugar bounties never ceased; but always the unwillingness of the sovereign states to surrender the exercise of any part of their sovereignty in a matter of such vital concern as tariff rates prevented the successful conclusion of an adequate arrangement. It was not until the Brussels Conferences of 1901–1902 that the European states finally consented to create an international body endowed with sufficient power to end the abuse. In practice the arrangement agreed upon amounted to a very considerable limitation upon the exercise of their sovereignty.

The Permanent Sugar Commission presents an excellent example of an international executive organ endowed with power to control the

action of the member states themselves.* It was created by the Sugar Convention of March 5, 1902,[1] which was supplemented by the Additional Act of August 28, 1907,[2] and eventually signed by fourteen states, including Germany, Austria-Hungary, France, Great Britain, Italy, and Russia.[3] Although there is considerable difference of opinion as to whether English interests profited or lost by the abolition of the bounties, yet it is not disputed that the Commission has been effective and successful in the attainment of its object.

By the Convention of 1902 the signatory states bound themselves to abolish sugar bounties, both direct and indirect (Art. 1), not to impose import duties upon non-bounty-fed sugars beyond a certain maximum (*i. e.*, six francs per one hundred kilos in excess of the excise tax)† (Art. 3), and to impose a countervailing duty upon imported bounty-fed sugar (Art. 4). This last is the penal clause which

* See the text of the Convention of March 5, 1902, in Appendix C, p. 189.

For the text of the Additional Act of August 28, 1907, see Appendix C, p. 199.

† The limitation of the tariff was to put an end to the practice of "dumping" sugar upon foreign markets. This dumping or selling in foreign markets at less than cost price by private producers without government assistance is made possible through vast profits reaped from domestic sales; and this in turn is made possible on a large scale through the protection of a high tariff which shuts out foreign competition.

has helped to make the Convention effective; the provision that bounty-fed sugars shall be discriminated against by a tariff at least as high as the bounty has given security that the contracting states will not have to fear competition with bounty-fed sugars.

As in most of the Public Unions, the Convention creates a permanent bureau, to be located at Brussels, whose duty it is to collect, arrange, and publish statistics and information of every kind which pertain to sugar legislation. In addition to this informational bureau, however, which is of quite minor importance, the Convention provides for a permanent international Commission, "charged with overseeing the execution of the dispositions of the present convention." The Commission is composed of one delegate from each of the contracting states; it has its seat at Brussels. Its functions are: (*a*) to determine whether in the signatory states there is accorded any direct or indirect bounty on the production or exportation of sugar; (*b*) to determine whether the contracting states which are not exporters—*i. e.*, Spain, Italy, and Sweden—and which were therefore accorded certain exemptions from the general requirements of the Convention, continue to be non-exporters. If the Commission decides, by majority vote, that one of these has

become an exporting state, the state must within one year adapt its legislation to the general provisions of the Convention; (*c*) to determine the existence of bounties in non-signatory states and the amount of the compensatory duties, which all signatory states must then put into effect within two months; (*d*) to give advisory decisions on questions in controversy; (*e*) to determine upon requests for admission to the Union on the part of states which are not yet members, and, if admission seems advisable, to give due form to such requests; (*f*) to authorize by a majority vote the levy of an increased surtax (the increase not to exceed one franc per hundred kilograms) by any one of the contracting states against the sugar of another by which its markets are being flooded to the serious injury of its own national production; and (*g*) to determine the method of apportioning among the member states its own expenses and those of the Permanent Bureau.[4]

A striking feature of the Commission is that it is given power to act by a majority vote. The usual diplomatic requirement of unanimity is thus brushed aside in the interest of efficiency; the result adds immeasurably to the power and effectiveness of the Commission. Thus it may come about that an individual state may

be compelled to alter or modify a tariff quite against its own sovereign wishes.[5]

It will be seen that through the determinations of the Sugar Commission, from which there is no appeal to any higher body,* the member states are directly controlled in the vital matter of the fixing of their sugar tariffs, and the conforming of their legislation to the dispositions of the Convention. If, for instance, the Commission votes that bounties are directly or indirectly being given in any country, all the signatory states as a result are compelled to raise their duties upon sugar coming from that country to an amount at least equal to the bounties. As Reinsch says: "The Sugar Commission is the only international organ which has a right, through its determinations and decisions, to cause a direct modification of the laws existing in the individual treaty states, within the dispositions of the Convention."[6] In view of the sensitiveness of states in regard to any compromise of their sovereignty, it is not surprising that those who objected to the Sugar Convention should have based their protests upon the ground that it constituted an impairment of sovereignty. This "police court," said one writer, is "to declare

* Appeal for a reconsideration may, in certain cases, be made to the Commission itself.

what duty Great Britain must impose to 'countervail' any sugar that may arrive from those states. . . . For us it seems to lay up a store of trouble—not to enlarge on the indignity of our new protective customs duties being fixed for us by foreign states."[7]

So unusual are the powers accorded to the International Sugar Commission, and so important have been its accomplishments within the domain of sugar legislation, that an examination of its operation and its history will not be out of place.

Its first session took place from June 2, 1903, to March 14, 1904. At this session it was voted that ordinary meetings should be held twice every year. Action was taken also upon the application for admission to the Union of Luxemburg, Peru, and Russia; and a careful study was made of the sugar legislation of signatory and non-signatory states. As a result France, Austria, and Hungary were compelled to make several modifications in their sugar régime. Bounties were declared to exist in other countries, such as the Argentine, Costa Rica, the Dominican Republic, etc., and compensatory duties were declared against them.[8]

The second session of the Conference lasted from October 10 to October 22, 1904, and devoted itself to a further study of sugar legisla-

tion and the application of the penal clause. It also considered the request of Russia and Switzerland for admission to the Union under special dispensations, but took no final action thereon.

Up to this time the Sugar Convention had worked smoothly and well. But its very success in the attainment of the object for which it was created—*i. e.*, the abolition of the sugar bounties among the signatory states—aroused among certain interests in England a feeling of dissatisfaction. The abolition of the bounties meant a consequent elevation in the price of imported sugars; and the sugar-importing interests began to bring pressure to bear upon the Government. From February 27, 1905, when a public protest was voiced against the Sugar Commission, until England's final withdrawal from the Convention under the pressure of public opinion, the work of the Commission was constantly hampered by English opposition.

In the session of April 6–11, 1905, the English delegate complained that the Commission had gone too far in fixing a compensatory duty against every country with a surtax above that allowed in the Union (under Art. 3), since the high surtax might not necessarily be used for "dumping" purposes, and requested an appeal from some of the former decisions of the Commission rendered upon that basis. The Com-

mission assented; and the reconsideration occupied the entire session of April 6–11, 1905, and also the fall session of October 23–26, 1905, and resulted in the revoking of a certain number of compensatory duties.

From that time on the constant fear of England's withdrawal and the consequent danger of the dissolution of the Union tended to weaken the action of the Commission. Brazil, Mexico, Cuba, and Venezuela were all able to escape the levy of compensatory duties; only Mozambique was visited with the penalty.*

The question of admitting Switzerland under special dispensation was considered at the sessions of October 23–26, 1905, and December 9–10, 1906. Switzerland was admitted under the special terms of the protocol of June 26, 1906,[9] whereby she was released from the obligations of Art. 2 and 3 of the Sugar Convention, as long as she exported no sugar; and her delegate was given a seat, but no vote in the Permanent Commission.

At the seventh session of the Permanent Commission, which opened with its forty-ninth sitting, on June 6, 1907, the English delegate declared the intention of his Government to withdraw from the Union from September 1, 1908, unless Great Britain should be released

* In February, 1910.

from the obligation of Art. 4,[10] which requires the imposition of compensatory duties against sugar coming from countries granting sugar bounties. England was feeling the effect of the higher sugar prices, and was also smarting under the retaliatory duties imposed upon British Ceylon and Indian teas by Russia in return for the English compensatory duties upon Russian bounty-fed sugars. The session was suspended, and a new basis of agreement was talked over; on the reconvening of the session on July 25, 26, and 27, an agreement was established which took the form of the Additional Act of August 28, 1907.* Under this act Great Britain was released from the obligation of applying the penal clause of Art. 4 of the 1902 Convention; and all sugars exported from England were to be accompanied by a certificate of origin certifying that they did not originate in countries granting bounties.

In the session commencing on November 18, 1907, an agreement was reached concerning the accession of Russia. By the protocol of accession, signed on December 19, 1907,[11] Russia was allowed to retain her system of sugar bounties, but was required to restrict within definite limits the amount of her sugar exports, which after the first year were not to exceed

* For the text of this Act see Appendix C, p. 199.

the annual amount of 200,000 tons. Great Britain was not a signatory to this protocol, because, as was pointed out by the British delegate, since England could now freely admit Russian bounty-fed sugars, she was not interested in the restrictions of Russian exportation.

At the sessions of November, 1907, and December, 1908, Russia requested the Commission without success to allow it exceptional permission to exceed the 200,000-ton limit, in the event of serious European sugar shortages. Such sugar shortages, owing to poor beet crops, occurred in the following years and considerably raised the price of sugar in the European markets; Russia, on the contrary, had an oversupply of sugar which in 1911 amounted to 500,000 tons, and which under the convention she was not allowed to export. Therefore, in the session which opened on October 26, 1911, Russia found the situation favorable for demanding permission to increase her exports. The English delegate gave hearty support to the Russian demands; the continental delegates, on the other hand, generally agreed that if Russia desired to remain a member of the Union after the present agreement expired, she must abolish her sugar bounties and conform to the general provisions of the Conven-

tion. The session was suspended till December 8, 1911; when it reconvened it again took up the question of Russia, debating various proposals. Again the meeting was suspended until January 27, 1912, and then successively to February 26 and to March 15, 1912. An Accord was finally signed on March 17, 1912.[12] It renewed the Union for another five years, up to September 1, 1918, with the same conditions as before. Russia, however, was authorized to make in 1911–12 an extra exportation of 150,000 tons, and during each of the seasons of 1912–13 and 1913–14 to export an extra 50,000 tons. Because of the refusal of the Union to allow Russia a larger increase of her exports, Great Britain, as had long been expected, withdrew from the Convention from September 1, 1913, and Italy followed her example.[13].

The British withdrawal must not be interpreted as giving proof of any inherent defects or failure in the international organization of the Sugar Union. The original convention had been entered into for a period of five years only, and had later been prolonged for another like term. When the question arose of renewing it for a third five-year period, it was only natural that Great Britain should hesitate. The Convention had been written primarily in the

interests of the sugar-producing nations, in order to do away with the bounty system which was proving so costly to all exporting governments. England, however, as distinct from her colonies, constituted a sugar-consuming nation. She reasoned that her withdrawal would not cause the reappearance of the continental sugar bounties and thus impair the usefulness of the Union; hence, in spite of strong protests from several of her colonies, she refused to renew the Convention, which, in the opinion of many of her leaders, was disadvantageous to her own financial interests.

The obvious difference which lies between membership in the Sugar Union and membership in any League of Nations which is effective and powerful need hardly be pointed out. The former is of immediate concern only to sugar-exporting states, whereas the latter would be of such supreme importance to every state, regardless of political conditions or local interests, that it could not be lightly discarded by any. The experience of the last few years has dramatically shown that no single nation can hope to stand out against the ordered progress and opinion of the world.

That an international commission, with power to control so difficult and complicated a matter as sugar legislation, could exist at all

is not without significance,* and that it has proved so effective is a matter of the keenest interest to students of international organization. The work of the Commission has proved that where sufficient power is granted, an effective international organization is by no means chimerical.

2.—International River Commissions

Other examples of international organizations of the third type, having power in regard to the member states themselves, are the International River Commissions. These are usually empowered to make regulations for the navigation of rivers separating or flowing through several states, and are composed of representatives of all the riparian states.† The navigation regu-

* It is interesting to note that in spite of the opposing interests of the countries represented, the delegates, in the performance of their difficult tasks, showed a marked consideration for one another's feelings and interests. . . . "The delegates have always given proof of their sound judgment and prudence, and of the greatest solicitude for the economic interests of all the states, both signatory and non-signatory. . . . The Commission, then, constitutes a happy experiment, from which it will be possible in the future to draw inspiration which may prove useful in other fields of international law." (Translated from André, in *Revue Générale de Droit Int. Public*, Vol. XIX, p. 688.)

† It will be seen that these are closely related to River Commissions of the second type. The Danube European Commission is an example of the second, rather than the third, type because it is composed of representatives, not of the riparian states, but of the leading Powers of Europe. The short-lived Danube Riparian Commission of 1856 was an example of this third type.

lations thus made, however, are usually valid only after having been reported back to the member states and approved by all. Although, in comparison with the Sugar Commission, their executive and legislative powers are not very extensive, they have nevertheless proved extremely serviceable within the restricted scope allowed to them. A series of very successful commissions of this type has exercised supervision over the Rhine ever since 1804.

Prior to that time navigation upon the Rhine, which then formed the boundary between France and a number of German states, had become so precarious and costly, owing to the extortionate demands and tolls of the Rhine cities and provinces, that an international treaty to put an end to the abuse became almost a necessity. Accordingly, a treaty was entered into on August 15, 1804,[14] between France and the Holy Roman Empire;* this substituted uniform and fixed Rhine tolls and regulations for the diversified and harassing local levies and regulations which had existed up to that time, and provided that the new tolls should be paid into a central treasury. From the money thus

* The Holy Roman Empire was the only political bond which at that time existed between the separate German states; this was a federation of the loosest kind, each German state retaining its full sovereignty except in a few sharply defined matters.

collected were to be deducted the expenses of the River Commission and of the upkeep of the towpaths; of the balance half was to be paid to France, and the remainder to certain German princes. In order to secure the due carrying out of the terms of the treaty, Art. 43 provided for an administrative officer called the Director-General of the tolls; he was charged with directing and overseeing the imposition and collection of the tolls, maintaining uniformity, and executing generally the treaty provisions. He was appointed by agreement between the contracting parties, and took his oath of office to both the French Government and the Arch-Chancellor of the Roman Empire. He was assisted by four inspectors, two appointed by the French Government and two by the German Arch-Chancellor. These were to watch over the navigability of the Rhine, to see that the towpaths were kept in repair, to see that the stipulations of the Convention were observed in the fixing and collection of duties, and to report on all offenses against the navigation police and the collection of tolls. An international Commission was created, to meet once a year at Mayence, composed of the local prefect as commissioner of the French Government, a commissioner appointed by the German Arch-Chancellor, and a jurist who

lived on the Rhine, chosen by the other two commissioners. The president was to be alternately the French and the German commissioner. Appeals from the toll officials in matters of tolls collection or river police were to be brought before this Commission, which was empowered to render definitive judgment.

This treaty of 1804 was superseded by the provisions of Annex XVI of the Final Act of the Congress of Vienna of June 9, 1815.[15] Art. 10 of the Regulations for the Navigation of the Rhine, attached to this Annex, provided that "in order to establish a perfect control over the observance of the general regulation, and to constitute an authority which may serve as a means of communication between the states of the Rhine, upon all subjects relating to navigation, a central Commission shall be appointed." This Commission, composed of one representative from each state bordering on the Rhine, was to meet yearly at Mayence on the first of November, and also in the spring, if necessary. The president was to be chosen by ballot, and replaced each month in case the session should be prolonged. The Commission was to keep watch over the navigability of the river, to supervise the work of the river inspectors, and to "attend to all matters that may contribute to the general interests of navi-

gation and commerce." It was also to hear appeals carried up from the Rhine courts, concerning navigation or river police. It acted upon a majority of votes; and each state was entitled to one vote except when appointing or removing river inspectors. The votes of the Commission, however, were not to bind the states of the Rhine until the consent of the latter should have been given to the commissioners. A chief inspector and three deputies were created "in order that a permanent authority may exist, which, in the absence of the Central Commission, may superintend the observance of the regulation, and to which the merchants and boatmen may at all times refer."

An exceedingly interesting arrangement was devised for the election of these river inspectors. Prussia with considerable reason advanced the view that, whereas in the judicial and legislative work of the Commission each riparian state should be accorded an equal right to representation and a single vote, yet, in administrative matters, since some states possessed far more of the river-bank than others, it would be only fair to weight, or value, the votes. Accordingly, while each state was given a single vote of equal value in all legislative and judicial matters, in the appointment of the chief and deputy river inspectors, who constituted the main admin-

istrative functionaries of the river, it was provided that voting power should be roughly proportioned to "the extent of their respective possessions on the bank."[16] Thus it came about that in the choice of the chief inspector the commissioners were entitled to the following proportion of votes: Prussia, one-third; France, one-sixth; the Netherlands, one-sixth; and the German states, except Prussia, one-third. The deputy inspectors were to be chosen, one by Prussia, one by the other German states, and one alternately by France and the Netherlands. The duties of these inspectors were to superintend the river regulations and the police work along the river, to have supervision over the local officers. and to report to the Central Commission.

Another interesting provision in the treaty of 1815 was the creation of the "Rhine Courts," one of which was "attached to each office where duties are collected, for the purpose of investigating and determining agreeably to the regulation, in the first instance, all disputes" relating to river navigation. These included all such matters as disputes arising from the collection of tolls, breaches of river regulations, contests between boatmen, suits for damages from collisions, etc. The judges of these special courts of restricted jurisdiction were appointed

by the local sovereigns and made directly responsible to them; but the individual judges took oath strictly to observe the Rhine regulations, and it was specially provided that they could not be displaced "unless by a regular and formal process and by a judgment given against them." Those wishing to appeal from the decisions of these Rhine Courts were given the option of applying either to superior tribunals situated in the same districts and similarly sworn to observe the Rhine regulations, or to the Central Commission, previously described. This power of appeal to the Central Commission was a very substantial right; it put an effectual check upon attempts by local officials to treat outsiders and foreigners oppressively or unjustly; and the local influence of the provision was thus of large importance.

A dispute having arisen between the German states and the Netherlands, a new treaty was signed at Mayence on March 31, 1831, between France, the Netherlands, and the German states bordering upon the Rhine.[17] This treaty again retained the "Central Commission" of the Rhine.[18] This was to be formed of one commissioner from each riparian state, and was to meet on July 1st each year at Mayence, and again in the autumn, if necessary. It was to choose its president by lot. It was to

appoint and have supervision over the chief inspector of the river. Its functions were to see that the regulations of the convention were put into execution, to propose new regulations to the member states, to push the execution of the works for improving the navigability of the river, to turn in reports, and to act as a court of last resort on the appeals carried before it. It was to act by a majority of votes, which were of equal value; but its decisions did not become binding until ratified by the signatory states. The chief inspector was appointed for life by the River Commission in the same manner as previously.[19] He was to hear and endeavor to settle complaints from all parties relative to river navigation, which could be carried in the first instance either to the local courts or to the river inspectors. If the complaint seemed well founded, he was to bring the matter to the attention of the provincial authorities; failing justice there, he was to take the case before the Central Commission. These provisions show how effective an influence over local functionaries was conferred upon the chief inspector, although it is to be noted that final control over local authorities in river matters was vested, not in the inspector, but in the Central Commission. The inspector was also to keep the Commission informed at

each session as to the needs and defects of river navigation. The existence of the special Rhine tribunals was continued under this treaty.

The results of the Austro-Prussian War of 1866 necessitated the making of still another treaty; this was signed on October 17, 1868, by France, the Netherlands, Prussia, Bavaria, Baden, and Hesse,[20] and is still in force to-day.[21] The new treaty again preserved the Central Rhine Commission, composed of one delegate from each riparian state. Under the new treaty the Commission is to meet in August annually, and to have extra sessions upon the request of one state. The president is to be designated by lot for each meeting, and in case of judgment on appeal, he is to have a casting vote. The Commission examines all complaints arising from the application of the convention; it takes cou sel on the propositions of the governments to improve navigation; it makes an annual report upon the state of navigation; it executes the common river regulations; and it decides appeals carried to it from the Rhine Courts. It acts by a majority of votes, which are of equal value, but, as in the case of the previous treaties, its resolutions are not obligatory until after approval by the signatory governments.

The principal change effected by this treaty was the abolition of the Rhine River tolls, due

to Prussia's desire to consolidate and unify the German states. The chief river inspector, who had largely outlived his usefulness, was dropped from this treaty. This appreciably diminished the executive power of the Commission; for although the former inspection districts were continued and the local inspectors still required to report to the Central Commission, yet, since they were appointed and paid by the governments in whose territory they acted, they were not likely to prove independent. The Rhine Courts, however, were continued, and the power of optional appeal from these courts, either to the local courts or to the Central Commission, was maintained. The number of appeals actually carried before the Central Commission is comparatively small, but the mere existence of this power has a large influence upon local administration.

Although France has, of course, appointed no delegate since 1871, the treaty of 1868 was still in effective operation up to the outbreak of the European War.[22]

In all these Rhine treaties of 1804, 1815, 1831, and 1868 the principle of an international Commission to supervise the improvement of navigation, to administer common river regulations, and to hear appeals in complaints regarding navigation or river police has been

constantly and successfully maintained. Although changing national boundaries and political conditions necessitated alterations in the method of appointment of the commissioners and in the details of the river arrangements, the principle of the international commission was found to work so well that it was retained in each succeeding treaty, and still obtains today. No better proof of its success could be had. The general functions of the Central Commission, it is true, are executive and judicial rather than legislative. The river regulations are for the most part made by common agreement between the riparian states; the Commission administers them and hears appeals arising from their execution. Nevertheless, it has been extremely influential even in a legislative way, in suggesting measures for river regulation; and, quite apart from its large judicial and executive functions, has proved itself invaluable as a meeting-ground to settle by intimate discussion questions arising from the navigation of the Rhine. The International Rhine Commission may be regarded, therefore, as one of the examples of an international executive organ with power, which has been attended with real success.*

* The treaty of May 18, 1815, between Prussia and Saxony provided (Art. 17) for the creation of a Commission to regulate

NOTES

[1] Martens, *N. R. G.* (2nd Series), Vol. XXXI, p. 272.

[2] Hertslet's *Commercial Treaties*, Vol. XXV, p. 547.

[3] Acceded December 19, 1907. Hertslet's *Commercial Treaties*, Vol. XXV, p. 1050.

[4] Politis, in his article upon "L'Organisation de L'Union Internationale des Sucres" in the *Revue de Science et de Législation financières*" for January–

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the navigation of the Elbe, in accordance with the general principles adopted at the Congress of Vienna. By the treaty of June 23, 1821 (Martens, *Nouveau Recueil*, Vol. V, p. 714) between Austria, Denmark, Great Britain, Prussia, Saxony, Hanover, Mecklenburg-Schwerin, and other German states, the navigation of the Elbe was declared to be entirely free with respect to commerce; and to secure this end a Commission was provided for (Art. 30), whose members should be appointed by the riparian states, and whose president should be elected by a majority of votes. The objects and powers of this Commission were "to watch over the present convention; to form itself into a committee for the settlement of any differences which may arise between the states bordering on the river, and to determine upon the measures which by experience may be found to be necessary to the improvement of commerce and navigation."

See also the treaty between Austria, Modena, and Parma of July 3, 1849, committing the regulation of the navigation of the Po to an international Commission.

Also, the treaty of Bucharest of December 3/15, 1866 (*Recueil des Traités d'Autriche-Hongrie*, Vol. XX, N. S., p. 452), between Austria, Russia, and the Danubian principalities, setting up a permanent international Commission for the navigation of the Pruth, a tributary of the Danube. The Commission (Art. 7), composed of representatives of the signatory powers, draws up rules of navigation which form the law for civil as well as police cases, fixes the tolls, designs and carries out the works of improvement in the channel of the river, and supervises the maintenance of navigability and the application of the regulations. By common agreement it appoints an inspector, who supervises the col-

March, 1904, classifies the power of the Sugar Commission, roughly, as follows:

I. "Consultative Attributes."

(a) Makes a report on all questions submitted to it to the interested Powers (Art. 7).

(b) Proposes necessary measures to prevent bounty-fed sugars which have been carried through a member state from enjoying the advantages of the Convention in the ultimate market (Art. 8).

(c) Furnishes its advice on controversial questions (Art. 7).

(d) Determines whether or not bounties, direct or indirect, are being given in member states (Art. 7).

II. "Executory Decisions."

(a) Determines whether or not Italy and Sweden (both being signatories) are exporting sugar, and, therefore, subject to certain restrictions (Art. 7).

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lection of the tolls, and who has an international character. The governments keep close control of the Commission, and its regulations and plan of river improvement must be approved by them.

See also the treaty of August 31, 1835, between Spain and Portugal, regulating the navigation of the river Douro, and providing for a Mixed Commission to regulate navigation dues and the policing of the river. (See *Colección de los Tratados* [of Spain] *por el Marqués de Olévart*, Vol. I, p. 70.) The Commission is to be composed of four members, two to be named by each Government (Art. 4). It has power to fix the river tariff; and this cannot be altered by either state except through common agreement (Art. 6).

(b) Determines whether or not bounties exist in non-signatory states, and, if so, how great (Art. 7).

(c) Passes on requests for admission to the Union by non-signatory states (Arts. 7 and 9).

(d) Nominates the permanent Bureau.

(e) Fixes the amount of expenses of itself and the permanent Bureau, and decides on the method of apportionment of these expenses among the signatory states (Art. 7).

(f) Has power to authorize the increase of the sugar tariff in exceptional cases by certain states. (Final protocol.)

[5] For British Act of Parliament of August 11, 1903, for putting the Sugar Convention into effect, see *British and For. State Papers*, Vol. XCVI, p. 108. For French legislation to the same effect, see *ibid.*, p. 313.

For a good account of the Sugar Commission see *R. G. D. I. P.*, Vol. XIX, p. 665.

[6] Reinsch, *Public International Unions*, p. 51.

[7] Quoted from an article by Lough, Thos., in *The Contemporary Review*, Vol. LXXXIII, p. 82.

[8] See *British and For. State Papers*, Vol. XCVI, p. 234, for British Order in Council, prohibiting the importation into England of bounty-fed sugars from Denmark, Russia, and the Argentine, in accordance with the vote of the Permanent Commission. "And whereas it appears from the findings of the Permanent Commission, as contained in Command Paper

1632, presented to Parliament, that the said Permanent Commission has reported that a bounty on the exportation of sugars is granted in Denmark, Russia, and the Argentine Republic, Now, therefore," etc.

[9] Hertslet's *Commercial Treaties*, Vol. XXIV, p. 1043.

[10] Art. 4 reads in part as follows: "Les Hautes Parties Contractantes s'engagent à frapper d'un droit spécial, a l'importation sur leur territoire, les sucres originaires de pays qui accorderaient des primes à la production ou à l'exportation.

"Ce droit ne pourra être inférieur au montant des primes, directes ou indirectes, accordées dans le pays d'origine. Les Hautes Parties se réservent la faculté, chacune en ce qui la concerne, de prohiber l'importation des sucres primes."

[11] Hertslet's *Commercial Treaties*, Vol. XXV, p. 1050.

[12] Martens, *N. R. G.* (3rd Series), Vol. VI, p. 7.

For an account of the sugar situation in Russia prior to 1912, see Viallate et Caudel, *La Vie Politique*, Vol. VI (1911–12), p. 402.

[13] See the British notice of withdrawal and statement of the British position in Hertslet's *Commercial Treaties*, Vol. XXVI, p. 356. For the Italian notice of withdrawal see *ibid.*, p. 729.

The proceedings of the International Sugar Commission may be found in the Reports of the British delegate, published from year to year in the *British Parliamentary Accounts and Papers.*

For the Reports and correspondence relating to the British withdrawal, see *British Parliamentary Accounts and Papers* (1912-13), Vol. XCIII, pp. 857, 869, and 957; (1912-13), Vol. CXXI, p. 83; (1912-13), Vol. LX, p. 279; (1913), Vol. LXXXI, p. 159.

[14] Martens, *Recueil de Traités*, Vol. VIII, p. 261.

[15] Martens, *Nouveau Recueil*, Vol. II, p. 414.

[16] See Art. 13.

[17] de Clercq, *Recueil*, Vol. IV, p. 24.

[18] See Title IX.

[19] See Art. 13 of Annex XVI of the Treaty of Vienna.

[20] Martens, *N. R. G.*, Vol. XX, p. 355.

[21] Liszt, *Das Völkerrecht* (10th ed.), p. 156.

[22] See the German law of December 24, 1911, *R. G. B.* (1911), p. 1137, concerning the improvement of navigation and the collection of tolls for this purpose in regard to the Rhine, the Elbe, and the Weser.

Because of Holland's having refused her consent, however, Germany has been unable to put this law into effect.

CHAPTER VI

CONCLUSIONS

1. Underlying Reasons for Success or Failure

IT must be frankly recognized that up to this time very few international executive organs with power have proved successful. The reason, however, is not to be sought in any fundamental impossibilities in international government. The true explanation lies in the fact that hitherto nations, loath to restrict the exercise of their own sovereign powers, have been unwilling to accord any real power of control to an international body. The striking fact is not that successes have been so few, but rather that in the very few cases where international government has been sincerely and honestly tried, and where necessity has forced the nations to accord to the international organ sufficient power, the results have been on the whole successful.

An examination of the few instances in which states have been willing to set up an international organ of the second or third type,

shows that the failures have been due primarily to one or more of the following three reasons:

1. Virtual impotence of the executive organ.
2. Unimportance of object and consequent indifference of member states.
3. Impossibility of conditions at the outset.

Virtual impotence of the executive organ is due generally to an unwillingness on the part of sovereign states to restrict their own sovereign independence, or to place their trust in any international organization. In the Congo River Commission the nations refused to back the loans, upon the successful negotiation of which depended the whole accomplishment of its task; without the power to raise money, the Commission might as well never have been created. In the Suez Canal Commission the only powers intrusted to it were to "inform the Khedivial Government of the danger which they may have perceived," and to make demands if the liberty of navigation should be interfered with. A Commission with power only to inform and to make demands will never prove very effective.

In some instances it has been the comparative unimportance of the object of the Commission which has prevented success. Where sovereign states are indifferent to, or only slightly concerned in the success of the international

project, they are not likely to subject their independence to a really effective control by any international body, nor, after its creation, to iron out difficulties nor to overcome the petty differences which are sure to arise. Such was the case in the Huangpu River Commission in China. It has been the cause of failure in innumerable other instances too unimportant to mention.

The impossibility of success owing to local conditions faced at the very outset has been at the root of at least two failures. The International Commission has sometimes been resorted to merely as a means to tide over an impossible situation and prevent war; it has been created, not in the faith that any international organization can resolve the peculiar difficulties of the situation, but simply as a device to avoid the dividing up of some international plum and the regrettable consequences which might ensue. This was the reason for the failure of the Moroccan International Police venture, when all of the parties concerned knew in their hearts that the loudly proclaimed internationalization was only a makeshift, and the facts of the case made a real internationalization out of the question. In the same way the Albanian International Commission was given the impossible task of creating in a moment a

unified nation out of warring and unsettled tribes, beset by the jealousies of most of the nations of Europe.

The encouraging thing to remember is that in all the failures of the past there is no evidence that international government is impossible. Where the nations have been earnest in their purpose to set up an organ of international control, and where the object to be attained has been of sufficient importance to cause the creating states to accord to it adequate power, the organ has generally been successful. The Danube Commission, the Rhine Commission, and particularly the Sugar Commission, all bear evidence of this fact.

2.—The Unanimity Requirement

Perhaps one of the oldest and most securely established principles of diplomatic procedure is the time-honored rule that in all diplomatic gatherings and congresses the majority has no power to bind the minority. As the president of the Hague Conference of 1907 remarked: "The first principle of every Conference is that of unanimity; it is not a vain form, but the basis of every political understanding."* This

* The unanimity requirement was one of the great obstacles faced at both of the Hague Conferences.

At the memorable Congress of Berlin, in 1878, Prince Bismarck,

rule of unanimity springs directly from the conception of sovereignty which underlies the present form of international law, that each state is the unrestricted arbiter of its own fate, and that no state therefore can be bound against its will.

At a time when every state was well-nigh a self-sufficing unit such a theory of a perfect independence of any external restriction accommodated itself well enough to the actual situation; states were, in fact, almost as separate as water-tight compartments, and the affairs of one had little real effect upon the internal order of another. But to-day the situation is quite different. Overseas transportation and communication and, with them, international trade and finance, have developed as though by the magic of some old romance; an international "division of labor" has been evolved; almost no state is economically self-sufficient, but is hopelessly dependent upon international exchange, either for its raw materials or for its manufactured products. As so often happens, the facts of international life have outstripped the law. Nations are no longer financially

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in the course of his remarks at the first session, considered it "incontestable that the minority in the Congress shall not be bound to acquiesce in a vote of the majority." (See *Berlin Protocols*, p. 14.)

and commercially and socially independent; they are in a very real sense interdependent, and subject, in point of fact, whether they will or no, to innumerable economic, social, and even political restrictions from without. The existence of some thirty Public International Unions, which have developed within the past half-century, each tending to substitute international for state control within its own field, bears striking evidence of the fact that the tremendous development of international activity is fast making state separateness impossible, even were it desirable. The further progress of the world is coming to depend more and more upon concerted international arrangement and co-operative action; and concerted international action presupposes of necessity a certain restraint upon the exercise of individual sovereignty by each state. National sovereignty must thus yield to international demands; the right of the individual state to stand out against the ordered progress of the world is open to serious question.

So far as the unanimity requirement is concerned, a distinction must be pointed out between special diplomatic congresses and ordinary, functioning organs of government. It is one thing to require unanimity in a diplomatic gathering representing an unrelated group of

nations, called together to ascertain whether or no all are willing to agree to some treaty or to enter into some common arrangement; it is quite another to require unanimous consent in a regularly constituted governmental organ, exercising carefully defined and specially delegated powers. It needs little argument to prove that a functioning organ will cease to operate effectively if it must constantly labor under the burden of the unanimity requirement. In their national and commercial life states have long ago learned this lesson. In the conduct of public affairs the majority vote is the cornerstone of the whole political structure. It is the unquestioned principle of industrial organizations. It is taken for granted wherever combinations of interests or of separate units act through a single organ. The reason is obvious. No two human beings think alike in all respects; and as long as a single discordant voice can block all action, no action of large importance will be possible. The member states of any League of Nations will always have widely differing ideas and interests; if the League cannot act until all agree, it will never be capable of any but petty action.

No better evidence could be had upon this point than that afforded by actual experience. Probably the most instructive and important

international gathering of recent years was the notable Hague Conference of 1907. One of the lessons which the Conference strikingly taught was the difficulty of great international accomplishment under the incubus of the unanimity requirement. As Sir Edward Fry, the ranking representative of the British Empire, pointed out in his official report upon the Conference to the British Secretary of State for Foreign Affairs, "the rights of the majority over the minority" must be settled "before another meeting of the Conference can prove satisfactory."*

In order to prove that unanimity does not make for effective action, it is hardly necessary to enter into a detailed examination of isolated instances in diplomatic history where this requirement has perforce been dispensed with in the interests of efficiency;† but a glance at

* "The machinery of this Conference has proved in a high degree dilatory and confusing; the rights of individual delegates to take up the time of the Conference, the rights of the majority over a minority in the absence of unanimity, the power of a chairman to confine the discussion within due limits—these and many other questions demand solution before another meeting of the Conference can prove satisfactory."

The Report referred to may be found in *British Parl. Accounts and Papers* (1908), Vol. CXXIV [Cd. 3857], p. 20.

† A striking case in point occurred in regard to the disputed Grecian boundary in 1881. In order to prevent Greece and Turkey from coming to blows, the great Powers of Europe created an international Commission to lay out the boundary.

the instances of international administration already referred to may be suggestive in this connection.

There is particular significance in the fact that the international organ which wields probably larger powers than any other in existence, has, doubtless because of the pressing necessity for effective co-operative action under which it developed, dispensed with the unanimity requirement. The International Sugar Convention of March 5, 1902, provides that decisions of the Permanent Convention shall be taken by a majority vote. As has already been pointed out, this Commission exercises very substantial power, since it controls, through its determinations of fact, matters of such vital national interest as the sugar tariffs of the

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Prompt action was so imperative that it was provided that all resolutions of the Commission should be passed by a majority of votes (treaty of May 24, 1881, between the great Powers and Turkey). Art. 1 of the treaty provides that "this delimitation will be fixed on the spot by a Commission composed of the Delegates of the Six Powers and of the two parties interested. The Delimitation Commission will pass their Resolutions by a majority of votes, each Power having but one vote."

In accordance with the decisions of the Commission, the new line was handed over, mile by mile, to the Greek nation.

Compare, also, such special provisions as that contained in the General Act of the Algeciras Conference of 1906 (Art. 76), which provides that "in every case covered by the present Declaration where the Diplomatic Corps [at Tangier] may be called to intervene, except in matters covered by Arts. 64, 70, and 75, the decisions will be taken by majority vote."

member states; its determinations become binding upon member states without their consent and without ratification by them. It seems hardly open to question that unless the great Powers which signed this Convention had been convinced that effective action was impossible so long as the unanimity requirement was maintained, they would never have been willing to permit an organ wielding such extraordinary power to act by a majority vote.

The International Sanitary Commissions afford similar examples. The unchecked spread of cholera and plague, as has already been suggested, is so extraordinarily rapid and tragic in its consequences that preventive action, if it is to be efficacious at all, must be unhesitating, efficient, and often even drastic. It is noteworthy that the International Sanitary Councils are accorded power to act by a majority vote. "The decisions of the Superior Board of Health" [of Constantinople], reads Art. 170 of the International Sanitary Convention of 1905, "reached by a majority of the members who compose it, are directly executory and without appeal."

In the Danube Commission, which stands among the most successful of the International Commissions, decisions are also taken by a majority of votes upon the important question

of modifying the tolls[1] or upon matters of internal concern. Under the regulations of 1879, however, unanimity is still necessary for questions of principle (*questions de fond*).[2] The Rhine River Commission, which has proved so successful that it has been maintained for over a century through the vicissitudes of changing treaties and altered political conditions, likewise acts by a majority vote,[3] although its votes do not become binding until they have been approved by the signatory governments.[4]

So, too, action is taken by majority vote in the governing body of the Universal Postal Union, the most successful and important of the larger Public Unions. It is true that the Postal Convention is silent upon the question of how voting is to be conducted at the periodic meetings of the Postal Congress; but under the exigencies of actual practice the question has been resolved in favor of the majority rule.[5]

To make the assertion that the unanimity requirement has, in one way or another, been dispensed with whenever prompt and effective action has seemed imperative, would be too sweeping a statement of the case; for in a number of instances, where the organ is comparatively small, or where single blocking states can be coerced into line through moral or social

pressure, the unanimity requirement still remains. Nevertheless, the fact that in those international organizations which have proved most successful the unanimity requirement has in most instances been displaced by the rule of the majority vote, is of sufficient significance to be worthy of serious consideration by those who would give to the League of Nations an executive organ of real efficiency.*

3.—Equality of Votes

Another question of fundamental importance, so far as international organization is concerned, is the problem of the weighting or valuing of votes. Perhaps in all the lengthy philosophical discussions of the fundamental principles of international law, there is no term more abused than that of the Equality of States. Volumes have been written to prove that all states, like men, are created equal; and there are still many modern and gifted writers who adhere to this theory, a product of the outlived philosophy of the Law of Nature.

* If the unanimity requirement is dispensed with, the question whether action should be taken upon a mere plurality vote, or whether a two-thirds or three-quarters majority should be required, is one which must depend largely upon other details of organization, and which it is not, therefore, possible in this study to discuss.

The fact is that the dogma of the Equality of States, like so many other dogmas over which bitter controversies have raged, is so ambiguous that it is capable of more than one interpretation; and unfortunately much confusion has been produced by a failure to make the necessary distinctions. In one sense it embodies a noble principle which few people outside of Germany and the Central Powers are inclined to deny; in another, it embodies a principle which is believed by many to be very far removed from justice or truth. In the sense that all states, great and small, should be treated alike before the law, that legal privileges should not be granted to the strong and withheld from the weak, that international protection and law should be accorded to all equally, the dogma of the Equality of States asserts a lofty truth, the integrity of which we have just been seeking to establish by one of the greatest wars in history. But in the other sense in which the dogma is sometimes used, that all states are equal in fact, and that therefore, great or small, each is entitled to precisely the same influence in molding and shaping the political affairs and future destinies of the world, the assertion of equality can hardly be substantiated by the facts. Luxemburg, for instance, with its 268,000 in-

habitants and an area of perhaps 1,000 square miles, is not entitled to the same voice in shaping the destinies of the world as is the British Empire, with a population of some 442,000,000 and an area of 12,784,755 square miles. No amount of brilliant philosophy can disprove the fact that no two states are equal in their resources, in their possessions, particularly in their capacities. As some writers have put it, equality of *rights* must be very carefully distinguished from equality of *capacities*. Nations have equal rights before the law, but not equal capacities. Power to influence the future course of nations springs rather from inherent native capacities than from rights; and if an international organ is to accord truly to the world of facts, the member states which compose it will be given voting power more or less according to their actual world influence. To give to states which are unequal in wealth, in area, in population, in native capabilities, in influence, and in military power, exactly the same voting power in a duly constituted executive organ would be to depart far from justice; and no institution founded on injustice can permanently endure.

It is quite true, as was suggested in the consideration of the unanimity requirement, that in a Conference or Congress of unrelated states,

called together to consider the making of some treaty or the formulation of some new arrangement, every state, powerful or weak, should have an equal voice and an equal right to declare whether it will or will not enter into the proposed treaty or arrangement; this is a *right* which, under the conception of the Equality of States in its first and truer sense, should be carefully secured. But the matter is very different as to voting in an executive organ with powers specifically delegated and carefully delimited; to invoke the dogma of the Equality of States in such a case is to use the phrase in its second and very questionable sense. The insistence upon equality of voting power under the cover of this dogma has wrecked more than one international project; this was directly, if not solely, responsible for the failure of the earnest efforts made at the Hague Conference of 1907 to create an international Court of Arbitral Justice.

No proof is necessary to make it clear that if, in the executive organ of a League of Nations, each of the great Powers is allowed a voice of influence no greater than that of the smallest principality, the great Powers will never consent to intrust their destinies to such control. The organ might be created; but the great nations would see to it that its powers

were so shadowy and unsubstantial that it would prove a mere mockery. It would be only a repetition on a larger scale of the International Suez Commission of 1888. Even if an organ with equal votes were endowed with actual power, it would be only a question of time before some vote, passed by a group of smaller states, whose interests naturally tend to draw them together, would prove intolerable to the great Powers; and the result would be the sudden overturning of the League by the nations which in the world of fact wield the actual power.

An examination of the various international organizations already considered reveals a number of different methods for weighting votes, some of them of a quite ingenious turn. Most of the important international organizations, however, have been unable to overcome the orthodox "one state, one vote" rule. In some cases this is due to the fact that the Commission is composed of representatives of states more or less equal in influence; in other cases it is because the difficulties to be overcome at the outset in creating the international organ were so great that it seemed impossible to weight the votes without endangering the whole project.

Perhaps the most natural scheme for what

amounts to an actual weighting of votes is that already described as adopted by the Universal Postal Union.[6] Under this provision, although nominally each state is given a single vote, large colonies are given separate ones; therefore, if the votes of the colonies are counted with those of the mother countries, the great Powers wield the following number of votes: Great Britain, six; France, four; Germany, three; United States, two; and Italy, two.*

The Postal Union is not the only one which has adopted this method of weighting votes. In the Telegraphic Union the Convention of 1906, although it definitely declares that "in the deliberations each country shall have one vote," makes provision, nevertheless, that "if a Government adheres to the Convention for its colonies, possessions, or protectorates, subsequent conferences may decide that such colonies, possessions, or protectorates, or a part thereof, shall be considered as forming a country as regards the application of the preceding paragraph [*i. e.*, the voting power]. But the number of votes at the disposal of one Government, including its colonies, possessions, or protectorates, shall in no case exceed six."[7]

A second and very indirect method of apportioning power or influence among the mem-

* A few smaller powers likewise were given more than one vote.

ber states is that also described before in connection with the Postal Union. This consists in giving large representation to the great Powers on the important committees, which usually wield the actual power in assemblies of any size. For obvious reasons this does not seem the happiest method of accomplishing the desired object.

A third and more open method is that of classifying all the member states in several different groups, and giving to each group a different voting power. Thus, the International Sanitary Convention of 1907, creating a Bureau of Public Hygiene, divides the signatory states into six different groups, the first group paying as high as twenty-five units of the expense of the Bureau, and the sixth paying only three.[8] Each state is given a number of votes inversely proportioned to the number of the group to which it belongs.[9]

Several other Public Unions have adopted this same method. In the International Institute of Agriculture, the signatory states are divided into five groups; and the members of each group are given a voting power roughly proportioned to the amount of financial assistance which they agree to render.[10] The most interesting feature of the arrangement is that each state is allowed freely to choose the group

to which it is to belong. In this way the difficulties of apportioning voting power completely disappear. If membership in the League of Nations should be made to entail very definite responsibilities in the amount of financial contributions required, in the number of soldiers and supplies which might have to be furnished for police work, in the economic and other burdens to be assumed, this idea of apportioning votes according to responsibilities assumed might prove extremely suggestive.*

In seeking to gain an understanding and appreciation of the principles involved in the creation of an executive organ for a League of Nations, no attempt has been made to describe the League as it should be set up in 1919, or to outline in even the most general terms its powers. Because of political and other practical considerations, it may prove necessary to

* Difficult as it may be to secure any scheme for the weighting of votes which will receive the consent of sufficient nations to put it into operation, it is not impossible. At the last Hague Conference, when the delegates were trying to devise a scheme for the selection of judges for the International Prize Court, agreement seemed for a time impossible, since the small nations tenaciously insisted upon the same representation upon the Court as that possessed by the great Powers. But in the end an ingenious scheme was hit upon which accorded a different measure of representation to the various states in a manner acceptable to those present; and the Convention for the creation of an International Prize Court was thereupon duly signed. Owing to other causes, however, the Court has never been put into operation.

begin with only a rudimentary League, in the hope that it will evolve into an organ of more and more power as it proves practicable and serviceable. The critical danger of such a course, as need hardly be pointed out, is that any League without adequate power at the outset, may, like the Egyptian Suez Commission, prove a dismal failure. It is therefore of especial importance to discover in the beginning the eternally just and true principles to which it should adhere; if these can be discovered, the sooner the League conforms to them the better for all concerned.

4.—The Chance for Success

So far as the League of Nations is concerned, one must recognize that if it is to have a really effective executive organ, the latter must be of the third and most difficult type. Although many highly successful organs of the first type have been created, very few of the second, and still fewer of the third have come into existence and survived. In direct proportion to the amount of power vested in the international organ and to the scope of the functions accorded to it, are magnified the international jealousies and animosities and all the divergencies of interests that make community of action difficult.

It must be recognized that the power to be invested in the proposed executive organ may grow in the course of time into the largest ever concentrated within the hands of a small group, even though controlled through the democracy of the political systems represented.

On the other hand, factors of supreme importance would come into play, making for success. So huge are the issues involved, and so vital to the very existence of the smaller nations and to the security of the larger ones will be the success of this great international venture, that the member states cannot afford to allow smaller selfish interests to overthrow the League. Its existence will furnish the only guarantee for international order; for the events of the past have shown beyond peradventure that no small nation is safe under guarantees not backed with organized world force. This necessity for its existence will prove the surest pledge of its success. Necessity can reconcile almost any differences. It was this factor which enabled the early American states, on the adoption of the Federal Constitution, to overcome their differences, which had seemed quite irreconcilable and had well nigh placed them at the mercy of Europe. Where international co-operation becomes a thing of necessity, defects of organization will be ironed out,

competent and able administration will be insisted upon, and indifference will not be tolerated. It was the necessity of the occasion which compelled the nations of the world, whose representatives had met to consider the urgent necessities of international postal communication, to make larger restrictions upon the exercise of their sovereignty than they had ever previously made, and to sign the Postal Convention; it was necessity which later overcame all difficulties of administration and made of the International Postal Union a success. It was necessity which caused the evolution of the European Danube River Commission, and made of it a success. It was necessity again which caused the nations to go to such lengths in the creation of the Sugar Commission, and which made it successful in the accomplishment of its object. It will be necessity again, now revealed as it has never been before, which will evolve a successful and triumphant League of Nations.

NOTES

[1] See Art. 16 of the Treaty of Paris of March 30, 1856.

[2] See Art. 12.

[3] Art. 17 of the Treaty of Vienna, Annex XVI (Martens, *Nouveau Recueil*, Vol. II, p. 421); Art. 94 of the treaty of March 31, 1831 (de Clercq, *Recueil*

des Traités, Vol. IV, p. 53); Art. 46 of the treaty of October 17, 1868 (Martens, *N. R. G.*, Vol. XX, p. 369).

[4] The Agricultural Institute, one of the Public Unions to which most of the countries of the world belong, has also apparently dispensed with the unanimity requirement, since by Art. 5 of the Convention of June 7, 1905, two-thirds of all votes constitute a quorum and can therefore take action.

[5] Woolf, *International Government*, p. 123. See also *supra*, p. 25.

[6] See Art. 27 of the Postal Convention of 1906.

[7] Art. 12 of the Telegraphic Convention of November 3, 1906. (*Brit. and For. State Papers*, Vol. XCIX, p. 323). The number of colonies and dependencies to which representation and votes were accorded was finally decided in the Convention of 1912.

[8] See Art. 11 of the Annex to the Convention of December 9, 1907 (Hertslet's *Commercial Treaties*, Vol. XXV, p. 685).

[9] Art. 6.

[10] Art. 10 of the Agricultural Convention of June 7, 1905. See *supra*, p. 30, note.

APPENDICES

APPENDIX A

INTERNATIONAL LEAGUES OF THE PAST

I.—THE SEVENTEENTH CENTURY

(A) A LEAGUE OF NATIONS

Treaty of Peace between the French King, the Emperor, and the several Princes and States of the Roman Empire. Signed at Munster, October 24, 1648.

Article 123. That nevertheless the concluded Peace shall remain in force, and all Partys in this Transaction shall be oblig'd to defend and protect all and every Article of this Peace against any one, without distinction of Religion; and if it happens any point shall be violated, the Offended shall before all things exhort the Offender not to come to any Hostility, submitting the Cause to a friendly Composition, or the ordinary Proceedings of Justice.

Article 124. Nevertheless if for the space of three years the Difference cannot be terminated, by any of those means, all and every one of those concern'd in this Transaction shall be oblig'd to join the injur'd Party, and assist him with Counsel and Force to repel the injury, being first advertis'd by the injur'd that gentle Means and Justice prevail'd nothing; but without prejudice, nevertheless, to every one's Jurisdiction, and the Administration of

Justice conformable to the Laws of each Prince and State; and it shall not be permitted to any State of the Empire to pursue his Right by Force and Arms; but if any difference has happen'd or happens for the future, every one shall try the means of ordinary Justice, and the Contravener shall be regarded as an Infringer of the Peace. That which has been determin'd by Sentence of the Judge, shall be put in execution, without distinction of Condition, as the Laws of the Empire enjoin touching the Execution of arrests and Sentences.

(B) ARBITRATION

Treaty of Peace between Philip IV, King of Spain, and the United Provinces of the Low Countries. Signed at Munster, January 30, 1648.

Article 21. Certain Judges shall be appointed on both sides in an equal Number, in form of the *Chambre Mipartie*,who shall sit in the Low-Countries, and in such other Places as shall be found convenient and proper, and that everywhere, sometimes under the Obedience of the one, and sometimes of the other, according as shall be agreed by mutual Consent; which Judges appointed on both sides, shall (conformably to the Commission and Instruction that shall be given them, and upon which they shall make Oath according to a certain Form to be settled on both sides for that effect) have regard to the Negotiations of the Inhabitants of the said Provinces of the Low-Countries, and to the Burdens and Duties which of both sides shall be laid upon

Merchandizes: And if the said Judges perceive that any Excesses are committed on either side, or of both sides, they shall regulate and moderate the said Excesses.

Moreover, the said Judges shall examine into Disputes touching a Failure in the Execution of the Treaty, and the Contraventions thereof, which from time to time may happen in the Countries on this side, as also in the distant Kingdoms, Countries, Provinces and Islands of Europe; and shall summarily and fully determine therein, and decide as they see agreeable and conformable to the Treaty: the Sentences and Determinations of which Judges shall be executed by the ordinary Judges of the Place where Contravention shall have been committed, upon the Persons of the Contraveners, according as Occasion and Circumstance shall require; nor must the said ordinary Judges neglect to do the said Execution, or suffer it to be neglected, but repair the Contraventions within the space of six Months, after they the said ordinary Judges shall have been thereto requir'd.

II.—THE EIGHTEENTH CENTURY

(A) AN ANTE PEACE-TREATY LEAGUE OF NATIONS

*Confirmation of the Treaties made between the Queen of Great Britain and the States-General, December 22, 1711.**

[After intimating that they are very earnest "to join all their endeavours for maintaining" the treaty of peace

* *The Complete History of the Treaty of Utrecht*, Vol. I, p. 128.

(then entered upon) "against all persons whatsoever" the contracting powers confirm previous engagements looking towards the "prosecuting the present war with good success, according to treaty . . . till the enemy consent to the conditions of a just and safe peace, and a general peace be obtained and established." Then is stipulated the following]:

On the other hand, if a peace, by God's blessing, be had, Her Royal Majesty and the Lords the States-General do sincerely and solemnly engage, and mutually promise, that they will faithfully, diligently, and with the utmost industry, direct the course of their councils, and mutually employ their care and pains, (even with an arm'd force, if necessary) to the end that the said peace may be truly observ'd; that the right which any of the Confederates shall by common consent acquire thereby may remain safe and entire to them; and that all infractions of the said peace may be timely avoided and prevented; and that all controversies which may arise about its genuine sense be amicably decided, or if amicable means should not succeed, then before the end of two months, or even sooner, in a case where the exigency of the danger will not suffer delay, the common forces of the Confederates who shall subscribe this convention, shall be united together, and such a number sent to act either by sea or land against the disturber, whosoever he be, as the greatness of the danger shall require, till satisfaction be made to the party injured, and till there be an entire prospect or provision for renewing and securing the publick peace and tranquility.

For which end, *viz.*, for procuring in a more full and perfect manner a firm and solid tranquility, and to maintain the same, all and singular the Christian princes and states, who are lovers of peace, and especially His Imperial Majesty and the other Confederates, shall be invited, that they may enter into this convention, and give their consent and application for enlarging and accommodating it to its pacifick and wholesome scope, which is the only end the above-mention'd parties propose to themselves by this convention.

(B) GUARANTEES OF PEACE TERMS

Treaty of Utrecht entered into between Great Britain and France, March 31, 1713.

Article 24. It is mutually agreed that all and singular the Conditions of the Peace made this Day between his Sacred Royal most Christian Majesty, and his Sacred Royal Majesty of Portugal be confirmed by this Treaty; and her Sacred Royal Majesty of Great Britain takes upon herself the Guaranty of the same, to the end that it may be more firmly and inviolably observed.

*British guaranty of May 3, 1715, of the Treaty of Peace of Utrecht between Spain and Portugal.**

We, following the steps of our royal ancestors, and being unwilling to decline any offices, by which

* Martens, *Recueil des Traités*, Vol. I, Sup. p. 106.

the peace between the said Kings may be promoted, do therefore most readily engage for the preservation of the treaty now established; gladly taking the occasion to satisfy his Royal Majesty of Portugal of our friendship and sincere regard to his person and interests, agreeable to the most strict concord which has always been between the British and Portuguese crowns. We therefore have made ourselves guarantees and sureties of the said treaty of peace, as by these presents, in the most due and ample form we do make ourselves guarantees and sureties thereof; engaging and promising on our Royal word, to take care (as far as in us lies) that the said treaty, with all and every the articles and clauses in it, shall be sacredly and inviolably observed according to their genuine sense, and that nothing shall be done in any wise contrary thereunto; and that we will be always ready to enter into all such reasonable measures as shall appear most necessary and effectual for preserving the same from all violation. In witness whereof, etc.

III.—THE NINETEENTH CENTURY

(A) MUTUAL GUARANTEES

*Treaty of Alliance between Great Britain, Austria, Prussia, and Russia. Signed at Paris, November 20, 1815.**

Article 1. The High Contracting Parties reciprocally promise to maintain, in its force and vigour, the

* Hertslet's *Map of Europe by Treaty*, Vol. I, p. 372.

Treaty signed this day with His Most Christian Majesty, [*i. e.* the King of France] and to see that the stipulations of the said Treaty, as well as those of the Particular Conventions which have reference thereto, shall be strictly and faithfully executed in their fullest extent.

Article 6. To facilitate and to secure the execution of the present Treaty, and to consolidate the connections which at the present moment so closely unite the Four Sovereigns for the happiness of the world, the High Contracting Parties have agreed to renew their Meetings at fixed periods, either under the immediate auspices of the Sovereigns themselves, or by their respective Ministers, for the purpose of consulting upon their common interests, and for the consideration of the measures which at each of those periods shall be considered the most salutary for the repose and prosperity of Nations, and for the maintenance of the Peace of Europe.

(B) A LEAGUE OF NATIONS

*Declaration of Great Britain, Austria, France, Prussia, and Russia. Signed at Aix-la-Chapelle, November 15, 1818.**

The Convention of the 9th October, 1818, which definitively regulated the execution of the engagements agreed to in the Treaty of Peace of 20th November, 1815, is considered by the Sovereigns

* Hertslet's *Map of Europe by Treaty*, Vol. I, p. 573.

who concurred therein, as the accomplishment of the work of Peace, and as the completion of the political System destined to insure its solidity.

The intimate Union established among the Monarchs, who are joint parties to this System, by their own principles, no less than by the interests of their people, offers to Europe the most sacred pledge of its future tranquillity.

The object of this Union is as simple as it is great and salutary. It does not tend to any new political combination—to any change in the Relations sanctioned by existing Treaties. Calm and consistent in its proceedings, it has no other object than the maintenance of Peace, and the guarantee of those transactions on which the Peace was founded and consolidated.

The Sovereigns, in forming this august Union, have regarded as its fundamental basis their invariable resolution never to depart, either among themselves, or in their Relations with other States, from the strictest observation of the principles of the Right of Nations; principles, which, in their application to a state of permanent Peace, can alone effectually guarantee the Independence of each Government, and the stability of the general association.

Faithful to these principles, the Sovereigns will maintain them equally in those meetings at which they may be personally present, or in those which shall take place among their Ministers; whether they be for purpose of discussing in common their

own interests, or whether they shall relate to questions in which other Governments shall formally claim their interference. The same spirit which will direct their councils, and reign in their diplomatic communications, will preside also at these meetings; and the repose of the world will be constantly their motive and their end.

It is with these sentiments that the Sovereigns have consummated the work to which they were called. They will not cease to labour for its confirmation and perfection. They solemnly acknowledge that their duties towards God and the people whom they govern make it peremptory on them to give to the world, as far as it is in their power, an example of justice, of concord, and of moderation; happy in the power of consecrating, from henceforth, all their efforts to protect the arts of peace, to increase the internal prosperity of their States, and to awaken those sentiments of religion and morality, whose influence has been but too much enfeebled by the misfortune of the times.

AIX-LA-CHAPELLE, *15th November, 1818.*

APPENDIX B

DANUBE REGULATIONS

*Regulations fixing the Order of Procedure of the European Commission of the Danube, November 10, 1879.**

I.—GENERAL PROVISIONS

Article 1. Each regular full session is presided over by a delegate, chosen by rotation, in the alphabetic order of the powers represented. Each delegate fills the office of president for one session. The special sessions are presided over by the president of the last regular session. When the delegate whose turn it is to be president is absent at the opening of the session, the office passes to the delegate next in line according to the alphabetic order, which cannot be changed.

Article 2. The president receives the credentials of new delegates. He calls the meetings and declares their opening and closure. He directs the discussions and establishes during the meeting the text of decisions and the result of the votes.

If one of the delegates requests, the roll is called

* Sturdza, *Recueil des Documents relatifs à la Liberté de Navigation du Danube*, p. 127.

in alphabetic order of the powers, except that the president, who takes the vote, casts his vote last.

Article 3. During a regular full session the president supervises the drafting of the protocols, directs the secretariat, and signs the correspondence with the authorities.

Article 4. The commission holds two regular sessions every year and assembles for this purpose in full session in the first weeks of the months of May and November.

Article 5. The executive committee addresses to the delegates on the first of March and the first of September of each year a résumé of the questions which are to be discussed in common at the next session. Every proposal submitted after that date is also brought promptly to the notice of all the delegates.

A proposal made in the course of a session cannot, as a rule, be discussed in the session in which it is made.

Propositions for an increase of toll on sea-going vessels can only be voted in the regular session following that in the course of which they have been made.

Article 6. Delegates who do not attend a periodical session may vote in writing.

Article 7. Article 5 only applies to regular sessions.

Article 8. Regular sessions can only proceed if there are at least five delegates present.

There may be extraordinary sessions on a request supported by five delegates.

Article 9. When the annual budget of receipts and expenses of the commission is not voted on in time, the budget of the preceding year remains in force till the next full meeting.

Article 10. A session is not considered as closed until the protocols of all the meetings have been approved by the delegates who have taken part in them.

A member of the commission may confide to one of his colleagues or to the general secretary the power of approving for him the protocols as drafted.

Article 11. The procès verbaux state the decisions of the commission and the deliberations that have preceded them.

Each delegate is entitled to have inserted in the protocol his vote by writing.

If the written vote is not formulated till after the meeting, delegates of a different opinion may have inserted their reserves on the points which, in their opinion, would not have been developed verbally by the delegate who has given his vote in writing.

In the deliberations relating to the service of the personnel and the administration, the protocols of the full sessions state simply the decisions taken without mentioning the votes given for or against.

The discussion relating to such subjects is reproduced in detail in a separate report which is mentioned in the protocol and of which a manuscript copy is given to each delegate, for the information of his government, the minute remaining in the archives of the commission.

When a person other than a delegate gives verbal explanations during a full session, a résumé of his communication is communicated to him for revision before being finally inserted in the protocol.

Article 12. Decisions are by a majority of votes:

(*a*) When it is a question of form, in particular if it concerns the interior service of the commission, the relations of the commission with its employees, details of execution of measures decided upon in commission;

(*b*) When it is a question of modifying the tolls of navigation established by virtue of Article 16 of the Treaty of Paris of March 30, 1856.

On important questions [*questions de fond*] for which unanimity is required, decisions made unanimously by the delegates present become final two months after having been communicated to the absent delegates, unless a formal contrary vote is sent by one or several of these delegates, before the expiration of the said period of two months.

II.—EXECUTIVE COMMITTEE

Article 13. The executive committee is composed of all the members present at the seat of the commission, whatever their number and whatever the length of their stay.

If there is only one member present he has by right full power to dispose of urgent matters.

Article 14. The delegates present at the seat of the commission, in a minimum of three, as a court of the second and last instance, decide appeals to the commission from condemnations pronounced in

police matters by the inspector of navigation and by the captain of the port of Soulina.

The appeal court is presided over by the delegate charged with the direction of financial affairs, or if he be not present, by the delegate charged with the general direction of the administration.

Article 15. The delegates present at the seat of the commission are charged by rotation for the period of one month, one with the general direction of the administration of the commission, and another with the general direction of its financial affairs; the first acts with the title of administrative delegate [Délégué à l'administration]; the second, under that of financial delegate [Délégué aux Finances].

When one of the two offices becomes vacant it devolves on that one of the delegates present who has been the longest time without office.

The acceptance of an office does not imply the obligation to remain at the seat of the commission during the whole month.

Article 16. The executive committee, when it thinks proper, draws up a procès-verbal of the deliberations. These procès-verbaux are entitled: "Procès-verbaux of the Meeting of the Executive Committee of the European Commission at the date of * * * ." They are given a regular number under which they are carried on the journal of the central bureau.

Article 17. All directions, all orders [for supplies, work, etc.] instructions, and in general all dispositions, originating in the executive committee are put in writing.

The minutes are signed by all the members present, but for current matters the signature of the two delegates in office is sufficient. All notes, letters and instructions sent in relation to the general service, are signed by the administrative delegate, and all relative to the operation of the treasury by the financial delegate; they are countersigned by the respective chiefs of service.

When a member of the committee, by whom a document should be signed, is absent, it may be signed by one of his colleagues.

Every signature by a delegate on any document, including pay orders, from the commission, is preceded by the words "For the European Commission of the Danube."

Article 18. The executive committee consults the absent delegates on important questions.

If it makes decisions, in cases of emergency which exceed its executive capacity, it notifies without delay the absent delegates. Decisions of the committee are by a majority, in every case in which, for decisions of the same character in the full meetings, a majority would suffice.

But if, on the contrary, questions are raised for which the unanimity would be necessary in a full meeting, the committee in case of urgency refers the question by telegram to the absent delegates, whose answer is awaited for ten days. If there be no answer within this time the committee is authorized to put its decision into execution.

Article 19. The administrative delegate supervises especially the work of the secretariat.

Article 20. Letters, acts and documents addressed to the commission or to the executive committee are opened by the delegate present in the office; if no delegate be present the general secretary opens papers received and has them entered in the journal or register.

Important papers are circulated among the delegates present.

At the end of each month the general secretary sends to the delegates who do not reside at the seat of the commission, in a circular, a copy of the record with the documents entered and with a summary mention of the decisions arrived at; but this extract does not include documents concerning current matters or those whose communication would not interest the absent delegates.

Article 21. When a delegate who is alone at the seat of the commission has the intention of leaving, he notifies his colleagues by telegraph, as soon as his intention is fixed, and if no one of them is able to take his place, he turns over the direction of affairs to one of the chiefs of service at Galatz, who directs current affairs and supervises the carrying out of the decisions of the full commission under his own responsibility; he signs all documents, including pay orders.*

* Arts. 22 to 28 deal with Accounts and Financial Matters.

APPENDIX C

THE INTERNATIONAL SUGAR CONVENTION

I.—THE CONVENTION OF MARCH 5, 1902

*Convention between Great Britain, Germany, Austria, Hungary, Belgium, Spain, France, Italy, Netherlands, and Sweden, relative to Bounties on Sugar, signed at Brussels, March 5, 1902.**

Translation

Article 1. The High Contracting Parties engage to suppress, from the date of the coming into force of the present Convention, the direct and indirect bounties by which the production or exportation of sugar may profit, and not to establish bounties of such a kind during the whole continuance of the said Convention. For the application of this provision, sugar-sweetened products, such as preserves, chocolates, biscuits, condensed milk, and all other analogous products containing, in a notable proportion, artificially incorporated sugar, are assimilated to sugar.

The preceding paragraph applies to all advan-

* Hertslet's *Commercial Treaties*, Vol. XXIII, p. 579.

tages derived directly or indirectly, by the several categories of producers, from State fiscal legislation, and in particular to—

(*a*) Direct bonuses granted on exportation;

(*b*) Direct bonuses granted to production;

(*c*) Total or partial exemptions from taxation which profit a part of the products of manufacture;

(*d*) Profits derived from excess of yield;

(*e*) Profits derived from too high a drawback;

(*f*) Advantages derived from any surtax in excess of the rate fixed by Article 3.

Article 2. The High Contracting Parties engage to place in bond, under the continuous supervision, both by day and by night, of Revenue officers, sugar factories and sugar refineries, as well as factories for the extraction of sugar from molasses.

For this purpose the factories shall be so arranged as to afford every guarantee against the surreptitious removal of sugar, and the officers shall have the right of entry into all parts of the factories.

Check registers shall be kept respecting one or more of the processes of manufacture, and finished sugar shall be placed in special warehouses affording every requisite guarantee of security.

Article 3. The High Contracting Parties engage to limit the surtax—that is to say the difference between the rate of duty or taxation to which foreign sugar is liable, and the rate of duty or taxation to which home-produced sugar is subject—to a maximum of 6 fr. per 100 kilog. on refined sugar and on sugar which may be classed as refined, and to 5 fr. 50 c. on other sugar.

This provision is not intended to apply to the rate of import duty in countries which produce no sugar; neither is it applicable to the by-products of sugar manufacture and of sugar refining.

Article 4. The High Contracting Parties engage to impose a special duty on the importation into their territories of sugar from those countries which may grant bounties either on production or on exportation.

This duty shall not be less than the amount of the bounties, direct or indirect, granted in the country of origin. The High Contracting Parties reserve to themselves, each so far as concerns itself, the right to prohibit the importation of bounty-fed sugar.

In order to calculate the amount of the advantages eventually derived from the surtax specified under letter (*f*) of Article 1, the figure fixed by Article 3 is deducted from the amount of this surtax; half of this difference is considered to represent the bounty, the Permanent Commission instituted by Article 7 having the right, at the request of a Contracting State, to revise the figure thus obtained.

Article 5. The High Contracting Parties engage reciprocally to admit at the lowest rates of their tariffs of import duties sugar the produce either of the Contracting States or of those Colonies or Possessions of the said States which do not grant bounties, and to which the obligations of Article 8 are applicable.

Cane sugar and beet sugar may not be subjected to different duties.

Article 6. Spain, Italy, and Sweden shall be exempted from the engagements which form the subject of Articles 1, 2, and 3 so long as they do not export sugar.

Those States engage to adapt their sugar legislation to the provisions of the Convention within one year—or earlier if possible—from the time at which the Permanent Commission shall have found that the above-mentioned condition has ceased to exist.

Article 7. The High Contracting Parties agree to establish a Permanent Commission charged with supervising the execution of the provisions of the present Convention.

This Commission shall be composed of delegates of the several Contracting States, and a Permanent Bureau shall be attached to it. The Commission elects its President; it will sit at Brussels and will assemble at the summons of the President.

The duties of the delegates will be:—

(*a*) To pronounce whether in the Contracting States no direct or indirect bounty is granted on the production or on the exportation of sugar.

(*b*) To pronounce whether the States referred to in Article 6 continue to fulfil the special condition foreseen by that Article.

(*c*) To pronounce whether bounties exist in the Non-Signatory States, and to estimate the amount thereof for the purposes of Article 4.

(*d*) To deliver an opinion on contested questions.

(*e*) To prepare for consideration requests for admission to the Union made by States which have not taken part in the present Convention.

It will be the duty of the Permanent Bureau to collect, translate, arrange, and publish information of all kinds respecting legislation on and statistics of sugar, not only in the Contracting States, but in other States as well.

In order to insure the execution of the preceding provisions, the High Contracting Parties shall communicate, through the diplomatic channel, to the Belgian Government, which shall forward them to the Commission, the Laws, Orders, and Regulations on the taxation of sugar which are or may in the future be in force in their respective countries, as well as statistical information relative to the object of the present Convention.

Each of the High Contracting Parties may be represented on the Commission by a Delegate, or by a Delegate and Assistant Delegates.

Austria and Hungary shall be considered as separate Contracting Parties.

The first meeting of the Commission shall be held in Brussels, under arrangements to be made by the Belgian Government, at least three months before the coming into force of the present Convention.

The duty of the Commission shall be limited to findings and investigations. It shall draw up a report on all questions submitted to it, and forward the same to the Belgian Government, which shall communicate it to the States interested, and, at the request of one of the High Contracting Parties, shall convoke a Conference, which shall take such decisions or measures as circumstances demand.

The findings and calculations referred to under

letters (*b*) and (*c*) must, however, be acted on by the Contracting States; they will be passed by a vote of the majority—each Contracting State having one vote—and they will take effect in two months' time at the latest. Should one of the Contracting States consider it necessary to appeal against a decision of the Commission, the said State must, within eight days of notification to it of the said decision, require a fresh discussion by the Commission; the Commission will immediately hold a meeting, and will pronounce its final decision within one month of the date of the appeal. The new decision shall take effect, at latest, within two months of its delivery. The same procedure will be followed with regard to the preparation for consideration of demands for admission provided for under letter (*e*).

The expenses incurred on account of the organization and working of the Permanent Bureau and of the Commission—excepting the salaries or allowances of the Delegates, who shall be paid by their respective countries—shall be borne by all the Contracting States, and shall be divided among them in a manner to be determined by the Commission.

Article 8. The High Contracting Parties engage, for themselves and for their Colonies or possessions, exception being made in the case of the self-governing Colonies of Great Britain and the British East Indies, to take the necessary measures to prevent bounty-fed sugar which has passed in transit through the territory of a Contracting State from

enjoying the benefits of the Convention in the market to which it is being sent. The Permanent Commission shall make the necessary proposals with regard to this matter.

Article 9. States which have not taken part in the present Convention shall be admitted to adhere to it at their request, and after concurrence has been expressed by the Permanent Commission.

The request shall be addressed through the diplomatic channel to the Belgian Government, which shall undertake, when occasion arises, to notify the adhesion to all the other Governments. The adhesion shall entail, as of right, acceptance of all the obligations and admission to all the advantages stipulated by the present Convention, and will take effect as from the 1st September following the despatch of the notification by the Belgian Government to the other Contracting States.

Article 10. The present Convention shall come into force from the 1st September, 1903.

It shall remain in force for five years from that date, and in the case of none of the High Contracting Parties having notified to the Belgian Government, twelve months before the expiration of the said period of five years, its intention of terminating the effects thereof, it shall continue to remain in force for one year, and so on from year to year.

In the event of one of the Contracting States denouncing the Convention, such denunciation shall have effect only in respect to such State; the other States shall retain, until the 31st October of the year in which the denunciation takes place, the right

of notifying their intention of withdrawing as from the 1st September of the following year. If one of these latter States desires to exercise this right, the Belgian Government shall summon a conference at Brussels within three months to consider the measures to be taken.

Article 11. The provisions of the present Convention shall apply to the oversea Provinces, Colonies and foreign Possessions of the High Contracting Parties. The British and Netherland Colonies and Possessions are excepted, save as regards the provisions forming the object of Articles 5 and 8.

The position of the British and Netherland Colonies and Possessions is, furthermore, regulated by the Declarations inserted in the Final Protocol.

Article 12. The fulfilment of the mutual engagements contained in the present Convention is subject, as far as necessary, to the completion of the formalities and requirements established by the Constitutional laws of each of the Contracting States.

The present Convention shall be ratified, and the ratifications shall be deposited at the Ministry for Foreign Affairs at Brussels, on the 1st February, 1903, or earlier if possible.

It is understood that the present Convention shall become binding, as of right, only if it is ratified by those at least of the Contracting States who are not the subject of the exceptional provision of Article 6. Should one or more of the said States not have deposited their ratifications within the period

stipulated, the Belgian Government shall immediately take steps to obtain a decision by the other Signatory Powers as to whether the present Convention shall come into force among them alone.

FINAL PROTOCOL

On proceeding to the signature of the Sugar Convention concluded this day between the Governments of Germany, of Austria, and of Hungary, of Belgium, of Spain, of France, of Great Britain, of Italy, of the Netherlands, and of Sweden, the undersigned Plenipotentiaries have agreed as follows:

AS REGARDS ARTICLE III

Considering that the object of the surtax is the effectual protection of the home markets of the producing countries, the High Contracting Parties reserve to themselves the right, each as concerns itself, to propose an increase of the surtax, should considerable quantities of sugar produced by one of the Contracting States enter their territories; this increase would only apply to sugar produced by that State.

The proposal must be addressed to the Permanent Commission, which will decide, at an early date, by a vote of the majority, whether there is good ground for the proposed measure, as to the period for which it shall be enforced, and as to the rate of the increase; the latter shall not exceed 1 fr. per 100 kilog.

The assent of the Commission shall be given only

when the invasion of the market concerned is the consequence of real economic inferiority, and not the result of a factitious increase in price brought about by an agreement among producers.

AS REGARDS ARTICLE XI

(*A*) 1. The Government of Great Britain declares that no bounty, direct or indirect, shall be granted to the sugar of the Crown Colonies during the continuance of the Convention.

2. It also declares, as an exceptional measure, and reserving in principle entire liberty of action as regards the fiscal relations between the United Kingdom and its Colonies and Possessions, that, during the continuance of the Convention, no preference will be granted in the United Kingdom to Colonial sugar as against sugar from the Contracting States.

3. Lastly, it declares that the Convention will be submitted by it to the self-governing Colonies and to the East Indies, so that they may have an opportunity of giving their adhesion to it.

It is understood that the Government of His Britannic Majesty has power to adhere to the Convention on behalf of the Crown Colonies.

(*B*) The Government of the Netherlands declares that during the continuance of the Convention no bounty, direct or indirect, shall be granted to sugar from the Netherland Colonies, and that such sugar shall not be admitted into the Netherlands at a lower tariff than that applied to sugar from the Contracting States.

The present Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part of the Convention, and shall have the same force, value and duration.

II.—THE ADDITIONAL ACT OF AUGUST 28, 1907

*Additional Act between Great Britain, Austria and Hungary, Belgium, France, Germany, Italy, Luxemburg, Netherlands, Peru, Sweden, and Switzerland, to the International Sugar Convention of March 5, 1902. Signed at Brussels on August 28, 1907.**

Translation

Article 1. The Contracting States engage to maintain the Convention of March 5, 1902, in force, during a new period of five years, to date from September 1, 1908.

However, it will be lawful for any of them to withdraw from the Convention after September, 1, 1911, after one year's notice if, in the last meeting held before September 1, 1910, the Permanent Commission has, by a majority vote, decided that the circumstances justify allowing this privilege to the Contracting States.

Otherwise, the provisions of Article 10 of the said Convention of March 5, 1902, in regard to its denunciation and its tacit renewal, will remain applicable.

* See Hertslet's *Commercial Treaties*, Vol. XXV, p. 547,

Article 2. In derogation of Article 1, Great Britain will be freed, from September 1, 1908, from the obligation created by Article 4 of the Convention.

From the same date, the Contracting States may exact that, in order to enjoy the benefits of the Convention, sugar refined in the United Kingdom and exported to these states, must be accompanied by a certificate showing that no part of this sugar previously came from a country recognized by the Permanent Commission as according bounties for the production or exportation of sugar.

Article 3. The present Additional Act will be ratified and the ratifications will be deposited at Brussels with the Minister of Foreign Affairs at the earliest possible date, and in any case before February 1, 1908.

It will not become lawfully binding until it is ratified by all those of the Contracting States which are not covered by the exceptional provisions of Article 6 of the Convention. In the event that one or more of the said States shall not have deposited their ratifications within the time allowed, the Belgian Government will ask for a decision, within a month from February 1, 1908, on the part of those States which have ratified, as to their willingness to put the Additional Act into effect among themselves alone.

The States which shall not have ratified it before its expiration on February 1, 1908, will be considered as having denounced the Convention in sufficient time so that it ceases to apply to them from September 1st following, unless a contrary decision

is taken, at the request of those interested, by a majority of States called to decide as provided for in the preceding paragraph.

In testimony of which the respective plenipotentiaries have signed the present Additional Act.

THE END

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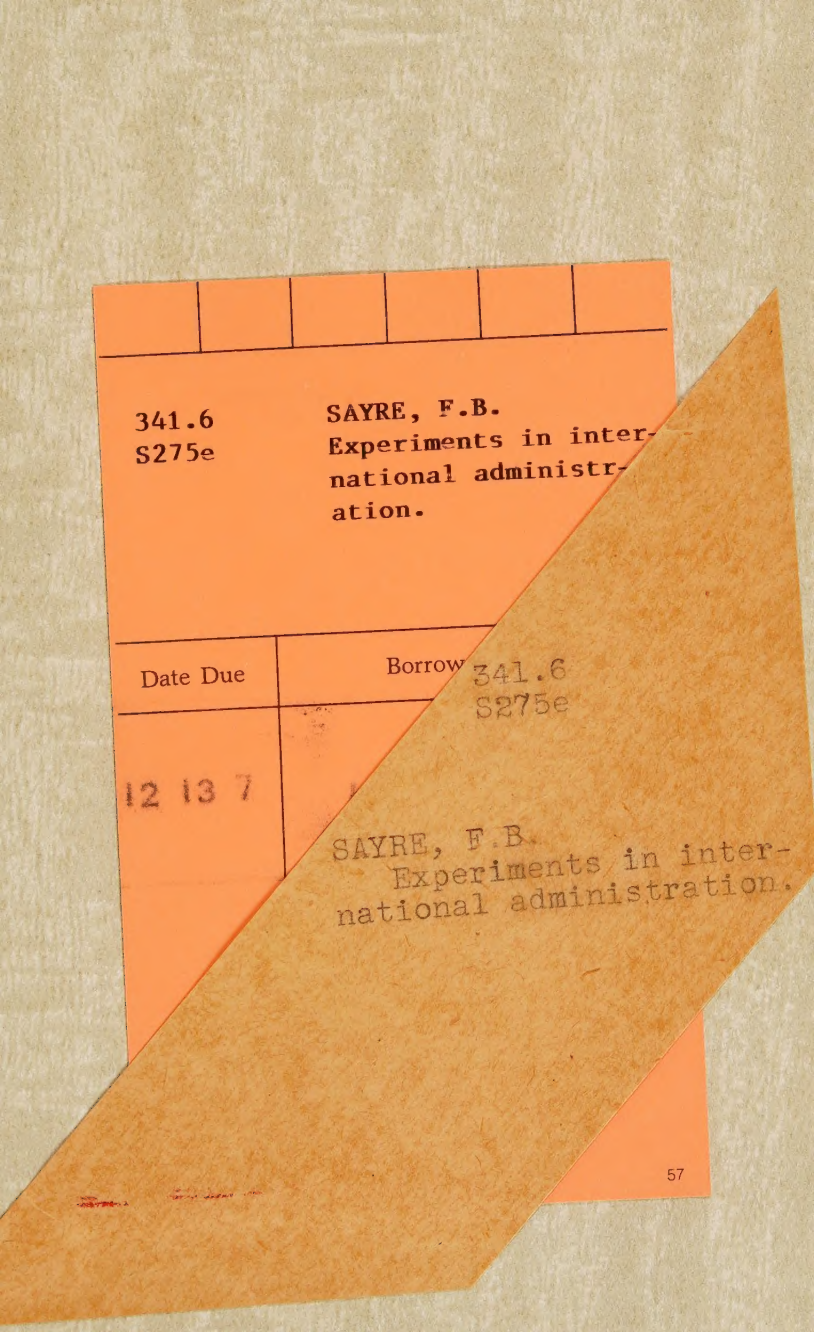
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